REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2357 OF 2017

GOVERNMENT OF NCT OF DELHI … APPELLANT(S)

VERSUS

UNION OF INDIA … RESPONDENT(S)

WITH

Civil Appeal No.2358 of 2017, Civil Appeal No.2359 of 2017, Civil Appeal No.2360 of 2017, Civil Appeal No.2361 of 2017, Civil Appeal No.2362 of 2017, Civil Appeal No.2363 of 2017, Civil Appeal No.2364 of 2017, Criminal Appeal NO.277 of 2017 and Contempt Petition (C) No.175/2016 in W.P.(Crl.) No.539/1986.

J U D G M E N T

ASHOK BHUSHAN, J.

These appeals have been filed questioning the Division Bench judgment of Delhi High Court dated

04.08.2016 deciding nine writ petitions by a common judgment, out of nine writ petitions, two writ petitions were filed by the Government of National Capital Territory of Delhi (hereinafter referred to as "GNCTD") being Writ Petition (C) No.5888 of 2015 (GNCTD vs. UOI) impugning:

> *"Notifications dated 21.05.2015 and 23.07.2014 issued by the Govt. of India, Ministry of Home Affairs empowering the Lt. Governor to exercise the powers in respect of matters connected with "Services" and directing the ACB Police Station not to take cognizance of offences against officials of Central Government."*

and Writ Petition (Crl.) No.2099 of 2015 (GNCTD vs. Nitin Manawat) impugning:

> *"Order passed by the Lt. Governor, NCT of Delhi under Section 24 of Cr. P.C. appointing a Special Public Prosecutor to conduct the trial in FIR No.21/2012 in the Special Court under PC Act."*

One writ petition filed by Union of India being Writ Petition (C) No.8867 of 2015 (UOI vs. GNCTD & Anr.) impugning:

> *"Notification dated 11.08.2015 issued by the Directorate of Vigilance, GNCTD under the Commissions of Inquiry Act, 1952 without*

placing before the Lieutenant Governor for his views/concurrence."

2. Other six writ petitions were filed by individuals challenging various notifications issued by GNCTD. The petitioners in Writ Petition (C) No.7887 of 2015 and Writ Petition (C) No.8382 of 2015 had challenged the notification dated 11.08.2015 issued by the Directorate of Vigilance, GNCTD under the Commissions of Inquiry Act, 1952. In Writ Petition (C) No.7934 of 2015 (Naresh Kumar vs. GNCTD & Ors.) impugned action was:

"Notification dated 04.08.2015 issued by the Revenue Department, GNCTD revising minimum rates of agricultural land (circle rules) under the provisions of Indian Stamp Act, 1899 and Delhi Stamp (Prevention of Undervaluation of Instrument)Rules without placing before the Lieutenant Governor for his views/concurrence."

Writ Petition(C) No.8190 of 2015 (Sandeep Tiwari vs. GNCTD & Ors.) was filed questioning:

"Order passed by the Department of Power, GNCTD under Delhi Electricity Reforms Act, 2000 read with Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 appointing the Nominee Directors on Board of Electricity Distribution Companies without placing before the Lieutenant Governor for his views/concurrence."

3. The petitioner in Writ Petition (C)No.348 of 2016 (Ramakant Kumar vs. GNCTD) had also challenged notification dated 22.12.2015 issued by the Directorate of Vigilance, GNCTD under the Commissions of Inquiry Act, 1952 constituting the Commission of Inquiry.

4. The Division Bench of the High Court after considering the arguments of the parties recorded its conclusion in paragraph 304 of the judgment and its outcome in paragraph 305. Paragraphs 304 and 305 are extracted below:

> *"304. The conclusions in this batch of petitions may be summarized as under:-*
>
> *(i) On a reading of Article 239 and Article 239AA of the Constitution together with the provisions of the Government of National Capital Territory of Delhi Act, 1991 and the Transaction of Business of the Government of NCT of Delhi Rules, 1993, it becomes manifest that Delhi continues to be a Union Territory even after the Constitution (69th Amendment) Act, 1991 inserting Article 239AA making special provisions with respect to Delhi.*
>
> *(ii) Article 239 of the Constitution continues to be applicable to NCT of Delhi and insertion of Article 239AA has not diluted the application of Article 239 in any manner.*

(iii) The contention of the Government of NCT of Delhi that the Lt. Governor of NCT of Delhi is bound to act only on the aid and advice of the Council of Ministers in relation to the matters in respect of which the power to make laws has been conferred on the Legislative Assembly of NCT of Delhi under clause (3)(a) of Article 239AA of the Constitution is without substance and cannot be accepted.

(iv) It is mandatory under the constitutional scheme to communicate the decision of the Council of Ministers to the Lt. Governor even in relation to the matters in respect of which power to make laws has been conferred on the Legislative Assembly of NCT of Delhi under clause (3)(a) of Article 239AA of the Constitution and an order thereon can be issued only where the Lt. Governor does not take a different view and no reference to the Central Government is required in terms of the proviso to clause (4) of Article 239AA of the Constitution read with Chapter V of the Transaction of Business of the Government of NCT of Delhi Rules, 1993.

(v) The matters connected with 'Services' fall outside the purview of the Legislative Assembly of NCT of Delhi. Therefore, the direction in the impugned Notification S.O.1368(E) dated 21.05.2015 that the Lt. Governor of the NCT of Delhi shall in respect of matters connected with 'Services' exercise the powers and discharge the functions of the Central Government to the extent delegated to him from time

to time by the President is neither illegal nor unconstitutional.

(vi) *The direction in the impugned Notification S.O.1896(E) dated 23.07.2014 as reiterated in the Notification S.O.1368(E) dated 21.05.2015 that the Anti-Corruption Branch Police Station shall not take any cognizance of offences against officers, employees and functionaries of the Central Government is in accordance with the constitutional scheme and warrants no interference since the power is traceable to Entry 2 (Police) of List II of the Seventh Schedule to the Constitution in respect of which the Legislative Assembly of NCTD has no power to make laws.*

(vii) *Notification No.F.5/DUV/Tpt./4/7/ 2015/ 9386-9393 dated 11.08.2015 issued by the Directorate of Vigilance, Government of NCT of Delhi under Section 3 of the Commission of Inquiry Act, 1952 appointing the Commission of Inquiry for inquiring into all aspects of the award of work related to grant of CNG Fitness Certificates in the Transport Department, Government of NCT of Delhi is illegal since the same was issued without seeking the views/concurrence of the Lt. Governor as provided under Rule 10 and Rule 23 read with Chapter V of Transaction of Business Rules, 1993.*

(viii) *For the same reasons, the Notification No. F.01/66/2015/DOV/15274-15281 dated 22.12.2015 issued by the Directorate of Vigilance, Government of NCT of Delhi under Section 3 of the*

Commission of Inquiry Act, 1952 appointing the Commission of Inquiry to inquire into the allegations regarding irregularities in the functioning of Delhi and District Cricket Association is also declared as illegal.

(ix) The appointment of Nominee Directors of Government of NCT of Delhi on Board of BSES Rajdhani Power Limited, BSES Yamuna Power Limited and Tata Power Delhi Distribution Limited by the Delhi Power Company Limited on the basis of the recommendations of the Chief Minister of Delhi without communicating the decision of the Chief Minister to the Lt. Governor of NCT of Delhi for his views is illegal.

(x) The proceedings of the Government of NCT of Delhi, Department of Power No.F.11(58) /2010/Power/1856 dated 12.06.2015 issuing policy directions to the Delhi Electricity Regulatory Commission regarding disruption in electricity supply to consumers and compensation payable in respect thereof are illegal and unconstitutional since such policy directions cannot be issued without communicating to the Lt. Governor of NCT of Delhi for his views.

(xi) The Notification No.F.1(1953)/Regn.Br./ Div.Com/HQ/2014/191 dated 04.08.2015 issued by the Government of NCT of Delhi, Revenue Department in exercise of the powers conferred by sub-section(3) of Section 27 the Indian Stamp Act, 1899 (2 of 1899) and Rule 4 of the Delhi Stamp (Prevention of Under - Valuation of Instruments) Rules, 2007 revising the

minimum rates for the purpose of chargeability of stamp duty on the instruments related to sale/transfer of agriculture land is illegal since the said notification was issued without seeking the views/concurrence of the Lt. Governor of NCT of Delhi as required under the constitutional scheme.

(xii) Though the Lt. Governor of NCT of Delhi is competent to appoint the Special Public Prosecutor under Section 24(8) of Cr.P.C., such power has to be exercised on the aid and advice of the Council of Ministers in terms of Clause (4) of Article 239AA of the Constitution.

305. In result, W.P.(C) No.5888/2015 is dismissed, W.P.(C) Nos.7887/2015, 7934/2015, 8190/2015, 8382/2015, 8867/2015, 9164/2015 and 348/2016 are allowed and W.P.(Crl.) No.2099/2015 is disposed of with directions."

5. The Government of NCTD aggrieved by the judgment has filed appeals. The GNCTD in its appeals has prayed for setting aside the judgment of the High Court.

6. Union of India has filed two appeals, namely, C.A.No.2364 of 2017 questioning the judgment of Division Bench in Writ Petition(C) No.7934 of 2015 and Criminal Appeal No.277 of 2017 questioning the judgment in Writ

Petition(Crl.) No.2099 of 2015.

7. These appeals raise important questions of law in respect of the powers exercisable by democratically elected Government of NCT in juxtaposition to the power of Lt. Governor of NCTD (hereinafter referred to as "LG").

8. During the hearing of the appeals, a two Judge Bench of this Court opined that the appeals involve substantial questions of law as to the interpretation of Article 239AA of the Constitution of India. The Division Bench passed the following order for placing the matter before Chief Justice for constituting a Constitution Bench:

> "*During the hearing of these appeals our attention is drawn to the provisions of Article 145(3) of the Constitution of India. Having gone through the matters and the aforesaid provisions, we are of the opinion that these appeals need to be heard by a Constitution Bench as these matters involve substantial questions of law as to the interpretation of Article 239AA of the Constitution.*
>
> *The Registry shall accordingly place the*

papers before Hon'ble the Chief Justice of India for constituting an appropriate Constitution Bench."

9. These appeals, thus, have been placed before this Constitution Bench. At the outset, it was agreed between the learned counsel for the parties that this Constitution Bench may only answer the constitutional questions and the individual appeals thereafter will be decided by appropriate regular Benches.

10. We have been benefited by erudite submissions made by learned senior counsel, Shri P. Chidambaram, Shri Gopal Subramanium, Dr. Rajiv Dhawan, Smt. Indira Jaising and Shri Shekhar Naphade. On behalf of Union of India, submissions have been advanced by Shri Maninder Singh, learned Additional Solicitor General for India. We have also heard other learned counsel appearing for the parties as well as learned counsel appearing for intervenor for whom Dr. A.M. Singhvi and Shri Arvind Datar, learned senior counsel have appeared. Shri Siddharth Luthra, learned senior counsel has appeared for respondent in C.A. NO.2360 of 2017.

11. A common written submission has been filed on behalf of Government of National Capital Territory of Delhi. Shri Maninder Singh, learned Additional Solicitor General has also filed the written submission on behalf of Union of India and Lt. Governor of NCTD.

The submissions

12. Learned senior counsel appearing for GNCTD has emphasised and highlighted various aspects of the different constitutional issues which have arisen for consideration in these appeals. Their submissions are referred hereafter as common submissions on behalf of GNCTD. It is submitted that NCTD occupies a unique position in constitutional jurisprudence by virtue of insertion of Articles 239AA and 239AB vide the Constitution (Sixty Ninth Amendment) Act, 1991. Though still a Union Territory, the NCTD has come to acquire various characteristics that were, prior to the 69th Amendment and the Government of the National Capital Territory Act, 1991 (hereinafter referred to as "1991 Act"), considered under the Constitution to be

characteristics solely of States. As a consequence, the GNCTD also enjoys far more powers than the Government of any other Union Territory. The History of constitutional provisions and Parliamentary enactments with respect to the NCTD clearly establishes that 69th Amendment and 1991 Act were passed aiming for giving the residents of the NCTD proper participation an ever larger say in the governance of NCTD, truer and deeper form of democracy. Article 239AA intended to completely eradicate any hierarchical structure which functionally placed Lieutenant Governor of Delhi (hereinafter referred to as "LG") in a position superior to that of the Council of Ministers, especially with respect to the exercise of executive power. Pursuant to Article 239AA, a cabinet system of Government on the Westminster style was introduced in Delhi and the LG was made a titular head alone in respect of matters that were assigned to Legislative Assembly and the Council of Ministers. By way of the express and deliberate exclusion of language similar to that of the 1963 Act and 1966 Act from the words of Article 239AA, and the replacement of "assist

and advise" with the term of art "aid and advice", the 69th Constitutional Amendment consciously obviated a requirement for the LG's concurrence and allowed the Council of Ministers created thereunder to govern the NCTD. The provisions of Article 239AA must be interpreted as furthering the basic structure of the Constitution, a purposive interpretation has always been adopted by this Court. Learned counsel have also relied on "doctrine of constitutional silence and convention".

13. It is contended that federalism being the basic structure of the Constitution. The interpretation of the constitutional provisions has to be done in a manner which may strengthen the federal structure as contemplated by the Constitution. The arguments of respondent that provisions of Article 239AA should be read in a strictly textual manner is not correct. Our constitutional jurisprudence has moved away by several decisions of this Court from a textual to more purposive and organic method of constitutional interpretation.

14. The 69th Constitutional Amendment installed a Westminster style of Government for NCTD. The constitutional head would be bound by the "aid and advice" of their Council of Ministers, this is irrespective of who is the constitutional head, whether President, State Governor or by logical end the LG. In the case of NCTD, the principle of collective responsibility to a democratic legislative body requires that the "aid and advice" of the Council of Ministers be binding on the LG in order to give due respect to the stated intention of the 69th Constitutional Amendment, i.e., the introduction of constitutionally mandated democratic governance in Delhi.

15. It is the petitioner's case that the extent of the executive powers of the GNCTD can be understood by way of a combined reading of the provisions of Article 239AA(3) read with Article 239AA(4). The GNCTD possesses exclusive executive powers in relation to matters that fall within the purview of the Assembly's Legislative competence. Neither the President nor the Central Government has any

executive powers in Delhi with respect to these matters and the LG as the President's delegate has no role or power in this regard. Article 239AA(3) gives the Delhi Legislative Assembly legislative powers over all but Entries 1, 2, 18 and Entries 64, 65 and 66 in so far as they relate to Entry 1, 2 and 18 of the State List, and all the subjects in the Concurrent List. The Council of Ministers' executive domain under Article 239AA(4) is the same. Moreover, Article 239AA reserves primacy of the Union Parliament and the Central Government only in limited area. This is clear from the provisions of Article 239AA(3)(b). The primacy of the legislative powers of Parliament is reserved by this provision but there is no corresponding provision in the Constitution which preserves the executive power of the Central Government *vis-a-vis* the Delhi Government in respect of the NCT. Thus, Article 239AA(3)(b) consciously preserves Parliament's Legislative powers for Delhi, as they obtained for all Union Territories under Article 246. Also it consciously omits from giving the Centre coterminous executive powers, and Article 73 will only

operate to give the Centre executive power in relation to the three reserved subjects of State List.

16. Dwelling on the interpretation of proviso to Article 239AA(4), it is submitted that proviso is not meant for the LG to have a different view on the merits of the aid and advice that has been tendered by the Council of Ministers and is only meant to deal with situations where the aid and advice of the Council of Ministers is transgressing beyond the areas constitutionally prescribed to them. It is submitted that the said proviso operates in the following areas, where the decision of the Council of Ministers of the NCTD:-

a. is outside the bounds of executive power under Article 239AA(4);

b. impedes or prejudices the lawful exercise of the executive power of the Union;

c. is contrary to the laws of the Parliament.

d. falls within Rule 23 of the Transaction of Business of Government of National Capital Territory of Delhi Rules, 1993 matters such as-

i. matters which affect the peace and tranquillity of the Capital;

ii. Interests of any minority community;

iii. Relationship with the higher judiciary;

iv. any other matters of administrative importance which the Chief Minister may consider necessary.

17. A holistic reading of Article 239AA(4) and the proviso reveals that the proviso exists because the norm is for the LG to be bound by the aid and advice of the Council of Ministers of the NCTD. This norm can only be departed from in the circumstances laid out above for the applicability of the proviso.

18. It is submitted that 1991 Act as well as the Rules themselves cannot be used to interpret the constitutional provisions rather they are reflecting the scheme of governance. The “services” lies within the Legislative and Executive domains of the Delhi Assembly and the GNCTD respectively.

19. Shri Maninder Singh, learned Additional Solicitor General for India replying to the submissions of learned counsel for the appellant contends that while interpreting the Constitution the Courts should give effect to plain and literal meaning of the constitutional provisions. There is neither any ambiguity nor any absurdity arising from the plain/literal interpretation of the provisions of 239AA. The constitutional provisions concerning the GNCTD have been inserted keeping in view the carefully envisaged scheme of governance for NCTD under the Constitution of India. The Constitution makers have deliberately used the widest possible words “any matter” in order to retain the powers of the Union in both the legislative and executive spheres in relation to all matters, keeping in view the unique features as well as special responsibilities of the Union, in each subject in relation to the National Capital. Any contention seeking a restrictive interpretation of the said provisions are impermissible in view of the law laid down by this Court. Any such contention would not only be

contrary to the constitutional scheme envisaged for Delhi but would also be contrary to the intention of the Constitution makers in using the widest possible language for emphasising the responsibility and supremacy of the Union in the administration of the National Capital.

20. The contention on the basis of principles of constitutional silence or constitutional implication which run contrary to the constitutional scheme envisaged by express provisions has to be rejected. The Balakrishnan Committee Report which was foundation for 69th Constitutional Amendment throws light on the intention of the Constitution makers.

21. Article 239 is an integral/inseparable part of the constitutional scheme envisaged for all Union Territories as provided for under Part VIII of the Constitution, and is to be read with Article 239AA for NCT of Delhi. Article 239 applies to all Union Territories including NCT of Delhi when read with Article 239AA, the way it applies to Pondicherry when read with the provision of

Article 239A.

22. Shri Maninder Singh during his submission has referred to various paragraphs of Balakrishnan Committee Report to bring home his point of view.

23. It is submitted that even when Article 239AA(3)(a) stipulates that Legislative Assembly of Delhi shall have the power to legislate in respect of subject matters provided in List II and List III of the VIIth Schedule of Constitution of India, it specifically restricts the legislative powers of Legislative Assembly of Delhi to those subject matters which are “applicable to Union Territories”. The Constitution envisages that List II and List III of the VIIth Schedule of the Constitution of India contain certain subject matters which are not applicable to Union Territories. The intention of the Constitution makers is that even when the subject matters contained in List II and List III of the VIIth Schedule become available to the Legislative Assembly of NCT of Delhi, the subject matters in the said Lists which are

not applicable to Union Territories would not become available to the Legislative Assembly of NCT of Delhi and would be beyond its legislative powers.

24. Article 246(4) provides that in relation to all Union Territories including Delhi and any other territory which is not a State, Parliament has power to make laws on **any matter** i.e. all subject matters contained in all three Lists of the VIIth Schedule. This independent separate provision once again recognises the ultimate/eventual responsibility of the Union in relation to the Union Territories on all subject matters.

25. Since the executive power of the Union under Article 73(1)(a), and which is vested in the President of India under Article 53 extends to all subject matters on which Parliament has power to make laws – in a Union Territory, the executive power of the Union extends to **any matter** i.e. all subject matters contained in all three Lists of the VIIth Schedule and remains vested in the President under Article 239 of the Constitution for administering

Union Territories, including Union Territory of NCT Delhi.

26. It is submitted that the proviso to Article 239AA(4) re-enforces and recognises the ultimate/eventual responsibility and continuing control of the Union in relation to the administration of the Union Territory of Delhi. The Constitution makers have envisaged that owing to its responsibilities in relation to every subject, it may become necessary for the Union Government to take any decision with regard to any matter in relation to the administration of the National Capital Territory of Delhi. Such a need may also be arising in relation to day-to-day functioning of the National Capital.

27. It is further submitted that the Constitution makers have deliberately used the widest possible phrase of "**any matter**" in the proviso to Article 239AA(4). The Constitution Bench of this Court in the case of ***Tej Kiran Jain and Others Vs. N. Sanjiva Reddy and Others, (1970) 2 SCC 272*** has clearly held that the word "any" used in

relation to “anything” in the Constitution — would necessarily mean “everything”. The said principle would make it abundantly clear that the phrase “any matter” used in Article 239AA would necessarily and unexceptionally mean “every matter”. Further, only such an interpretation would ensure the intended objective and the necessity that if the need arises, the Union is not prevented from discharging its responsibilities in relation to the National Capital in relation to any matter.

28. It is further respectfully submitted that the proviso to Article 239AA(4) would not deserve to be interpreted as an “exception”. It is not an exception but the reiteration of a constitutional mandate. The constitutional mandate is that the Union would have overarching control in relation to all matters for the National Capital. There is no vestige of any exclusive Executive Power in the Council of Ministers of NCT of Delhi. The vestige of the Executive Power continues to remain in the President. The proviso is controlling the

provision of Article 239AA(4), reiterating the overarching control of the Union, and is not an exception. The proviso indicates the constitutional mandate of supremacy of the Union. In the humble submission of the respondents, no restrictive interpretation of the proviso ought to be permitted and the clear Constitutional mandate contained in the proviso to Article 239AA(4) would deserve to be followed, especially in the case of the National Capital.

29. It is most respectfully reiterated that the unitary scheme of governance for Union Territories, especially for National Capital of Delhi, has been envisaged keeping in view the fact that the administration of Union Territories specially National Capital of Delhi is the responsibility of the President/Union. The Union Government is the responsible Government, accountable to the Parliament for the administration of the Union Territories. The National Capital belongs to people of the entire nation. Learned Additional Solicitor General has also referred to and relied on various provisions of

1991 Act and Transaction of Business Rules, 1993 with regard to administration of GNCTD.

30. Learned Additional Solicitor General in its submission also contended that there are very few instances in which LG has made reference to President and in actual working LG neither withhold the files nor there is any other hindrance in decisions taken by GNCTD. He submits that on various occasions without even communicating the decisions taken by the Council of Ministers/Ministers to the LG, the GNCTD starts implementing the decision which is not in accordance with the scheme of governance as delineated by Article 239AA. 1991 Act and Transaction of Business Rules, 1993.

31. Learned counsel for the parties in support of their respective submissions have placed reliance on a large number of judgments of this Court and Foreign Courts. Relevant decisions of this Court and other Courts shall be referred to while considering the respective submissions.

Importance of a National Capital

32. The word "Capital" is derived from Latin word "**caput**" meaning head and denotes a certain primacy status associated with the very idea of a Capital. Delhi is the National Capital of the country. For the purposes of this case it is not necessary to notice the early history of Delhi. During the British period Calcutta was a seat of both the Provincial Government of Bengal as well as the Central Government. The conflicts of authorities and jurisdiction between the Governor of Bengal and Governor-General was brought into the notice of the Secretary of the State in London. Lord Hardinge in his dispatch of 25.08.2011 emphasised "that the Capital of a great Central Government should be separate and independent, and effect has been given to this principle in the United States of America, Canada and Australia". A decision was taken to transfer Capital from Calcutta to Delhi which was announced on 12.12.1911. A Government Notification No.911 dated 17.09.1912 was issued under which the Governor-General-in-Council took under his authority the

Territories comprising the Tehsil of Delhi and the Police Station of Mehrauli which were formerly included in the province of Punjab. The Notification provided for the administration of areas as a separate province under a Chief Commissioner. The Delhi Laws Act, 1911 and the Delhi Laws Act, 1915 made provisions for the continuance of the Laws in force in the Territories comprising the Chief Commissioner's province of Delhi and for the extension of other enactments in force in any part of British India to Delhi by Governor-General-in-Council. In 1915, trans-Yamuna areas comprising 65 villages were separated from United Provinces of Agra and Oudh and added to the Chief Commissioner's of Delhi.

Administration of Delhi after Enforcement of the Constitution of India.

33. The Government of India Act, 1935 did not affect any material changes in the administrative set-up for Delhi and it continued as before to be a Chief Commissioner's Province directly administered by the Governor-General "acting to such extent as he thinks fit through a Chief Commissioner". On 31.07.1947, a Committee under the

Chairmanship of Dr. B.Pattabhi Sitaramayya was established to study and report on the constitutional changes required in the administrative structure obtaining in the Chief Commissioner's Provinces, including Delhi. The Committee recommended that Delhi, Ajmer, Bhopal, Bilaspur, Coorg, Himachal Pradesh including Cutch, Manipur, Tripura and such other provinces may be so **designated as shall be the Lt. Governor's Province.** The report was debated in Constituent Assembly when draft Articles 212 and 213 (which was adopted as 239-240) was debated. When the Constitution was enforced from 26th January, 1950 the scheme of the Constitution of India including Articles 1 to 4, Territory of India was divided into four categories Part 'A', Part 'B', Part 'C' and Part 'D' States. With regard to Part 'A' and Part 'B' States, the Constitution envisaged a vertical division of power between the Union and States wherein Part 'C' and 'D' States, Constitution had provided structure under which Union Government retained the power in both the executive and legislative sphere. Pert 'C' States had also been termed as centrally

administered areas which included Delhi. Parliament enacted the Government of Part C States Act, 1951, under which provision was made to aid and advice to Chief Commissioner. The States Re-organisation Commission was set up on 29.12.1953 which also took up subject of functioning of Part 'C' States. The State Re-organisation Commission made the following Report with regard to Delhi:

> *"584. It is hardly necessary to discuss in any detail the reasons why Delhi, if it is to continue as the Union Capital, cannot be made part of a full-fledged constituent unit of the Indian Union. Even under a unitary system of government, the normal practice is to place national capitals under a special dispensation. In France, for example, there is a greater degree of central control over Paris than over other municipalities. In England, the police administration of the metropolitan area is directly under the control of the Home Secretary, who does not exercise similar powers in respect of other municipal areas. Apart from reasons which are peculiar to each country or city, there are some general considerations necessitating special arrangements in respect of national capitals. Capital cities possess, or come to possess, some degree of political and social predominance. They are seats of national governments, with considerable property belonging to these governments. Foreign diplomatic missions and international agencies are located in these capitals. They also become centres of national culture and*

art. So far as federal capitals are concerned, there is also an additional consideration. Any constitutional division of powers, if it is applicable to units functioning in the seats of national governments, is bound to give rise to embarrassing situations. Practice in other countries, administrative necessity and the desirability of avoiding conflicting jurisdictions, all point to the need for effective control by national governments over federal capitals."

34. On the basis of the recommendation of the State Re-organisation Commission, 7th Amendment Act, 1956 was passed, under the Amendment Part 'C' States were renamed as Union Territory. Delhi a Part 'C' State became Union Territory and the Legislative Assembly and Council of Ministers ceased to act w.e.f. 01.11.1956. Subsequent to 7th Amendment, different schemes were enforced for administration of Delhi, Delhi Municipal Corporation Act, 1957 was passed by the Parliament providing for direct election of Councillors from all the constituencies to be elected by residents of Delhi. By Constitution 14th Amendment Act, 1962, Article 239A was inserted which was enabling provision for the Parliament to make law to create a Legislature or Council of Ministers or both for

the Union Territories specified therein. The Union Territory of Delhi was not included in the list of Union Territories in Article 239A. The Parliament enacted the Government of Union Territories Act, 1963. The Delhi Administration Act, 1966 was passed by the Parliament to provide for an elected body of Delhi Metropolitan Council. A Committee was appointed by the Government of India to go into the various issues connected with the administration of Union Territory of Delhi. The Committee, after, studying for two years about all aspects of the matters had submitted its Report on 14.12.1989 to the Home Minister. The Report of the Committee is commonly known as Balakrishnan Committee Report. While submitting the Report S.Balakrishnan, in nutshell, in his letter dated 14.12.1989 addressed to Home Minister has outlined task given to the Committee in following words:

> *"The task of designing a proper structure of Government for the national capital particularly for a country with a federal set up like ours, has always proved difficult because of two conflicting requirements. On the one hand, effective administration of the national capital is of vital importance to the national Government*

not only for ensuring a high degree of security and a high level of administrative efficiency but also for enabling the Central Government to discharge its national and international responsibilities; to ensure this, it must necessarily have a complete and comprehensive control over the affairs of the capital. On the other hand, the legitimate demand of the large population of the capital city for the democratic right of participation in the government at the city level is too important to be ignored. We have endeavoured to design a governmental structure for Delhi which we hope, would reconcile these two requirements."

35. Balakrishnan Committee Report studied different aspects connected with the administration of Delhi, the Capital of this country. While studying "National Capital Administration in some countries", in Chapter V, the Committee examined various models including United States of America, Canada, Japan and United Kingdom. After noticing the different aspects in paragraph 5.7.3 following has been observed:

"5.7.3 It will be clear from the above that it has been recognised in many countries of the world that the national government should have the ultimate control and authority over the affairs of the national capital. At the same time, there is a noticeable trend in those countries to accept the principle of associating the people in the capital with sectors of administration affecting them, by

means of a representative body. Because of the difficulty in securing a balance between these two considerations, the problem of evolving an appropriate governmental structure for the national capital has proved difficult in many countries particularly those with a federal type of government."

36. Before the Committee, the arguments for giving Statehood to Delhi as well as arguments against the Statehood was noticed. The Committee after considering the rival arguments concluded following in paragraph 6.5.9 and 6.5.10:

"6.5.9 We are also impressed with the argument that Delhi as the national capital belongs to the nation as a whole and any constituent 'State of the Union of which Delhi will become a part would sooner or later acquire a predominant position in relation to other States. Sufficient constitutional authority for Union intervention in day-to-day matters, however, vital some of them may be, will not be available to the Union, thereby prejudicing the discharge of its national duties and responsibilities.

6.5.10 In the light of the foregoing discussion our conclusion is that it will not be in the national interests and in the interests of Delhi itself, to restructure the set-up in Delhi as a full-fledged constituent State of the Union, this will have to be ruled out. We recommend accordingly."

37. While discussing "salient features of proposed structure" following was stated in paragraphs 6.7.1 and 6.7.2:

> *"6.7.1 As a consequence of our recommendation in the preceding paragraph that Delhi should be provided with a Legislative Assembly and a Council of Ministers the further issues to be considered are:*
>
> *(i) the extent of the powers and responsibilities to be conferred on or entrusted to these bodies, the special safeguards to ensure that the Union is not hampered in discharging its duties and responsibilities and the other salient features of the structure; and*
>
> *(ii) the manner in which the proposed changes in the structure should be brought about, that is, whether they should be by amendments to the Constitution, or by a Parliamentary law or by a combination of both.*
>
> *We will now take up the issue in item (i) above in the succeeding paragraphs. Item (ii) will be discussed in Chapter VII.*
>
> *6.7.2 As we have already stated, any governmental set-up for Delhi should ensure that the Union is not fettered or hampered in any way in the discharge of its own special responsibilities in relation to the administration of the national capital, by a constitutional division of powers, functions and responsibilities between the Union and the Delhi Administration. The only way of ensuring this arrangement is to keep Delhi as*

a Union Territory for the purposes of the Constitution. Thereby, the provision in Article 246(4) of the Constitution will automatically ensure that Parliament has concurrent and overriding powers to make laws for Delhi on all matters, including those relateable to the State List. Correspondingly, the Union, Executive can exercise executive powers in respect of all such matters subject to the provisions of any Central law governing the matter. We, therefore, recommend that even after the creation of a Legislative Assembly and Council of Ministers for Delhi it should continue to be a Union Territory for the purposes of the Constitution."

38. Various other recommendations were made by Balakrishnan Committee which led to Constitution 69th Amendment. Statement and Objects of Constitution 69th Amendment notices the object and purpose of constitutional amendment which are to the following effect:

"STATEMENT OF OBJECTS AND REASONS

The question of re-organisation of the Administrative set-up in the Union territory of Delhi has been under the consideration of the Government for some time. The Government of India appointed on 24-12-1987 a Committee to go into the various issues connected with the administration of Delhi and to recommend measures inter alia for the streamlining of

the administrative set-up. The Committee went into the matter in great detail and considered the issues after holding discussions with various individuals, associations, political parties and other experts and taking into account the arrangements in the national Capitals of other countries with a federal set-up and also the debates in the Constituent Assembly as also the reports by earlier Committees and Commissions. After such detailed inquiry and examination, it recommended that Delhi should continue to be a Union territory and provided with a Legislative Assembly and a Council of Ministers responsible to such Assembly with appropriate powers to deal with matters of concern to the common man. The Committee also recommended that with a view to ensure stability and permanence the arrangements should be incorporated in the Constitution to give the National Capital a special status among the Union territories.

2. The Bill seeks to give effect to the above proposals."

39. By 69th Amendment Act, Article 239AA and Article 239AB were added in Part VIII of the Constitution. Article 239AA and 239AB which Articles are taken up for consideration in these appeals are as follows:

"Article 239AA **{Special provisions with respect to Delhi}**

1. As from the date of commencement of the Constitution (Sixty ninth Amendment) Act, 1991, the Union territory of Delhi shall be called the National Capital Territory of Delhi (hereafter in this Part referred to as the National Capital Territory) and the administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor.

2(a) There shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.

(b) The total number of seats in the Legislative Assembly, the number of seats reserved for Scheduled Castes, the division of the National Capital Territory into territorial constituencies (including the basis for such division) and all other matters relating to the functioning of the Legislative Assembly shall be regulated by law made by Parliament.

(c) The provisions of articles 324 to 327 and 329 shall apply in relation to the National Capital Territory, the Legislative Assembly of the National Capital Territory and the members thereof as they apply, in relation to a State, the Legislative Assembly of a State and the members thereof respectively; and any reference in articles 326 and 329 to "appropriate Legislature" shall be deemed to be a reference to Parliament.

3(a) Subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with

respect to any of the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2 and 18.

(b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof.

(c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void: Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent, such law shall prevail in the National Capital Territory: Provided further that nothing in this sub-clause shall prevent Parliament form enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly.

4. There shall be a Council of Ministers consisting of not more than ten per cent of the total number of members in the Legislative

Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion: Provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary.

5. *The Chief Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the President.*

6. *The Council of Ministers shall be collectively responsible to the Legislative Assembly.*

7(a) *Parliament may, by law, make provisions for giving effect to, or supplement the provisions contained in the foregoing clauses and for all matters incidental or consequential thereto.*

(b) *Any such law as is referred to in sub-clause (a) shall not be deemed to be an amendment of this constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this constitution.*

8. *The provisions of article 239B shall, so far as may be, apply in relation to the National*

Capital Territory, the Lieutenant Governor and the Legislative Assembly, as they apply in relation to the Union territory of Pondicherry, the administrator and its Legislature, respectively; and any reference in that article to "clause (1) or article 239A" shall be deemed to be a reference to this article or article 239AB, as the case may be.

Article 239AB {Provision in case of failure of constitutional monarchy}

If the President, on receipt of a report from the Lieutenant Governor or otherwise, is satisfied -

(a) that a situation has arisen in which the administration of the National Capital Territory cannot be carried on in accordance with the provisions of article 239AA or of any law made in pursuance of that article; or

(b) that for the proper administration of the National Capital Territory it is necessary or expedient so to do, the President may by order suspend the operation of any provision of article 239AA or of all or any of the provisions of any law made in pursuance of that article for such period and subject to such conditions as may be specified in such law and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the National Capital Territory in accordance with the provisions of article 239 and article 239AA."

The Principles of Constitutional Interpretation

40. Before we proceed to examine the scheme delineated by Article 239AA, it is necessary to have an overview on the principles which have been accepted for interpretation of a Constitution. Before we notice the accepted principles for constitutional interpretation, we want to notice prophetic words of Dr. B.R. Ambedkar where Dr. Ambedkar in closing debate on 25.11.1949 in the Constituent Assembly on the draft Constitution made following statement:

> *"...Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However, bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics."*

41. After noticing the universal truth stated by Dr. B.R. Ambedkar as above, we now proceed to notice the principles of Constitutional interpretation. The general

rule for interpreting a Constitution are the same as those for interpreting a general Statute. Article 367 of the Constitution provides that Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. This Court in ***Keshavan Madhava Menon Vs. State of Bombay, AIR 1951 SC 128 : (1951) SCR 228*** held that court of law has to gather the spirit of the Constitution from the language of the Constitution. True meaning of the Constitution has to be arrived at uninfluenced by any assumed interpretation of the Constitution. In Para 13 of the judgment, following was held :-

> *"**13**. An argument founded on what is claimed to be the spirit of the Constitution is always attractive, for it has a powerful appeal to sentiment and emotion; but a court of law has to gather the spirit of the Constitution from the language of the Constitution. What one may believe or think to be the spirit of the Constitution cannot prevail if the language of the Constitution does not support that view. Article 372(2) gives power to the President to*

adapt and modify existing laws by way of repeal or amendment. There is nothing to prevent the President, in exercise of the powers conferred on him by that article, from repealing, say the whole or any part of the Indian Press (Emergency Powers) Act, 1931. If the President does so, then such repeal will at once attract Section 6 of the General Clauses Act. In such a situation all prosecutions under the Indian Press (Emergency Powers) Act, 1931, which were pending at the date of its repeal by the President would be saved and must be proceeded with notwithstanding the repeal of that Act unless an express provision was otherwise made in the repealing Act. It is therefore clear that the idea of the preservation of past inchoate rights or liabilities and pending proceedings to enforce the same is not foreign or abhorrent to the Constitution of India. We are, therefore, unable to accept the contention about the spirit of the Constitution as invoked by the learned counsel in aid of his plea that pending proceedings under a law which has become void cannot be proceeded with. Further, if it is against the spirit of the Constitution to continue the pending prosecutions under such a void law, surely it should be equally repugnant to that spirit that men who have already been convicted under such repressive law before the Constitution of India came into force should continue to rot in jail. It is, therefore, quite clear that the court should construe the language of Article 13(1) according to the established rules of interpretation and arrive at its true meaning uninfluenced by any assumed spirit of the Constitution."

42. This Court in subsequent judgments have also propounded the doctrine of literal interpretation and doc-

trine of purposive interpretation. There cannot be denial to the fact that the Court has to respect the language used in the Constitution wherever possible, the language be such interpreted as may best serve the purpose of the Constitution. A Constitutional document should be construed with less rigidity and more generosity than other acts. This Court in ***S.R. Chaudhuri Vs. State of Punjab & Ors., (2001) 7 SCC 126*** held that we must remember that a Constitution is not just a document in solemn form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the Democratic spirit underlying it being respected in letter and in spirit.

43. Before a Constitution Bench of this Court in ***G. Narayanaswami Vs. G. Paneerselvam and Others, (1972) 3 SCC 717***, provisions of Article 171 came up for interpretation, in the above case, in Paragraph 4 of the judgment, following principle was reiterated:-

> *"4. Authorities are certainly not wanting which indicate that courts should interpret in a broad and generous spirit the document which*

contains the fundamental law of the land or the basic principles of its Government. Nevertheless, the rule of "plain meaning" or "literal" interpretation, described in Maxwell's Interpretation of Statutes as "the primary rule", could not be altogether abandoned today in interpreting any document. Indeed, we find Lord Evershed, M.R., saying: "The length and detail of modern legislation, has undoubtedly reinforced the claim of literal construction as the only safe rule". (See: Maxwell on Interpretation of Statutes, 12th Edn., p. 28.) It may be that the great mass of modern legislation, a large part of which consists of statutory rules, makes some departure from the literal rule of interpretation more easily justifiable today than it was in the past. But, the object of interpretation and of "construction" (which may be broader than "interpretation") is to discover the intention of the law-makers in every case (See: Crawford on Statutory Construction, 1940 Edn., para 157, pp. 240-42). This object can, obviously, be best achieved by first looking at the language used in the relevant provisions. Other methods of extracting the meaning can be resorted to only if the language used is contradictory, ambiguous, or leads really to absurd results. This is an elementary and basic rule of interpretation as well as of construction processes which, from the point of view of principles applied, coalesce and converge towards the common purpose of both which is to get at the real sense and meaning, so far as it may be reasonably possible to do this, of what is found laid down. The provisions whose meaning is under consideration have, therefore to be examined before applying any method of construction at all……."

44. In ***B.R. Kapur Vs. State of T.N. and Another, (2001) 7 SCC 231*** Justice Pattanaik, delivering a concurring judgment, laid down following in Paragraph 72:-

> *"72. ……A documentary constitution reflects the beliefs and political aspirations of those who had framed it. One of the principles of constitutionalism is what it had developed in the democratic traditions. A primary function that is assigned to the written constitution is that of controlling the organs of the Government. Constitutional law presupposes the existence of a State and includes those laws which regulate the structure and function of the principal organs of the government and their relationship to each other and to the citizens. Where there is a written constitution, emphasis is placed on the rules which it contains and on the way in which they have been interpreted by the highest court with constitutional jurisdiction. Where there is a written constitution the legal structure of the Government may assume a wide variety of forms. Within a federal constitution, the tasks of the Government are divided into two classes, those entrusted to the federal organs of the Government, and those entrusted to the various States, regions or provinces which make up the federation. But the constitutional limits bind both the federal and State organs of the Government, which limits are enforceable as a matter of law……."*

45. Another Constitution Bench in ***Kuldip Nayar and Others Vs. Union of India and Others, (2006) 7 SCC 1*** after

the above quoted passage of ***G. Narayanaswami (supra)*** stated following in Para 201:-

> *"201. Xxxxxxxxxxxxxxxxx*
>
> *We endorse and reiterate the view taken in the abovequoted paragraph of the judgment. It may be desirable to give a broad and generous construction to the constitutional provisions, but while doing so the rule of "plain meaning" or "literal" interpretation, which remains "the primary rule", has also to be kept in mind. In fact the rule of "literal construction" is the safe rule unless the language used is contradictory, ambiguous, or leads really to absurd results."*

46. We may also notice the Constitution Bench Judgment in ***I.R. Coelho Vs. State of T.N., (2007) 2 SCC 1,*** it laid down the principles of construction in Paragraph 42, which is to the following effect:-

> *"**42.** The controversy with regard to the distinction between ordinary law and constitutional amendments is really irrelevant. The distinction is valid and the decisions from Indira Gandhi case (1975 Supp. SCC 1) up to Kuldip Nayar v. Union of India [(2006) 7 SCC 1] case represents the correct law. It has no application in testing the constitutional amendment placing the Acts in the Ninth Schedule. There is no manner of doubt that:*
>
> *A) In Kesavananda Bharati [(1973) 4 SCC 225] case Sikri, C.J. [para 475(h)], Shelat & Grover, JJ. [paras 607, 608(7)], Hegde & Mukherjea, JJ.*

[paras 742, 744(8)] and Jaganmohan Reddy, J. [paras 1211, 1212(4)] all clearly held that the Acts placed in the Ninth Schedule and the provisions thereof have to be subjected to the basic structure test.

(B) Chandrachud, C.J. in Waman Rao case [(1980) 3 SCC 587], followed the path laid down by 6 Judges in Kesavananda Bharati without quoting from their conclusions and without attempting to reconcile their views with the subsequent development in the law regarding the distinction between ordinary legislations and constitutional amendments."

47. Learned counsel for the appellant submits that Federalism being one of the basic structure of the Constitution, this Court may put such interpretation on Article 239AA, which strengthens the federal structure. It is further contended that Parliamentary democracy having been adopted by our Constitution, this Court may interpret Article 239AA so that Constitutional design and Constitutional objectives be fulfilled. It is submitted that judgments of this Court in ***Rustom Cavasjee Cooper Vs. Union of India, (1970)1 SCC 248: AIR 1970 SC 564*** and judgment of this Court in ***Maneka Gandhi Vs. Union of India and Another, (1978)1 SCC 248: AIR 1978 SC 597*** reflect

that principles of less textual and more purposive method of Constitutional interpretation which has been adopted in these cases. Judgment of this Court in ***K.C. Vasanth Kumar and Another Vs. State of Karnataka, 1985 Supp. SCC 714*** has been relied, wherein this Court laid down following:-

> *"…….It is not enough to exhibit a Marshallian awareness that we are expounding a Constitution; we must also remember that we are expounding a Constitution born in the mid-twentieth century, but of an anti-imperialist struggle, influenced by constitutional instruments, events and revolutions elsewhere, in search of a better world, and wedded to the idea of justice, economic, social and political to all. Such a Constitution must be given a generous interpretation so as to give all its citizens the full measure of justice promised by it. The expositors of the Constitution are to concern themselves less with mere words and arrangement of words than with the philosophy and the pervading "spirit and sense" of the Constitution, so elaborately exposed for our guidance in the Directive Principles of State Policy and other provisions of the Constitution……."*

48. Shri H.M. Seervai, in his "A Critical Commentary" on Constitutional Law of India, on interpretation of the Constitution, states following in Paragraph 2.1 and 2.2:-

"2.1 A Court of Law must gather the spirit of the Constitution from the language used, and what one may believe to be the spirit of the Constitution cannot prevail if not supported by the language, which therefore must be construed according to well-established rules of interpretation uninfluenced by an assumed spirit of the Constitution. Where the Constitution has not limited, either in terms or by necessary implication, the general powers conferred upon the Legislature, the Court cannot limit them upon any notion of the spirit of the Constitution.

2.2 Well established rules of interpretation require that the meaning and intention of the framers of a Constitution — be it a Parliament or a Constituent Assembly — must be ascertained from the language of that Constitution itself; with the motives of those who framed it, the Court has no concern. But, as Higgins J. observed — "in words that have not withered or grown sterile with years"-:

> *"although we are to interpret the words of the constitution on the same principles of interpretation as we apply to any ordinary law, these very principles of interpretation compel us to take into account the nature and scope of the Act we are interpreting, to remember that it is a Constitution, a mechanism under which laws are to be made, and not a mere Act which declares what the law is to be."*

49. Justice G.P. Singh in "Principles of Statutory Interpretation", 14th Edition, while discussing interpretation of Constitution stated following:-

> *"The Constitution is a living organic thing and must be applied to meet the current needs and requirements, and is not bound to be interpreted by reference to the original understanding of the constitutional economics as debated in Parliament. Accordingly, the Supreme Court held that the content and meaning of Article 149, which provides the duties and powers of the CAG, will vary from age to age and, given that spectrum is an important natural resource, CAG has the power to examine the accounts of telecom service providers under Article 149.*
>
> *It cannot, however, be said that the rule of literal construction or the golden rule of construction has no application to interpretation of the Constitution. So when the language is plain and specific and the literal construction produces no difficulty to the constitutional scheme, the same has to be resorted to. Similarly, where the Constitution has prescribed a method for doing a thing and has left no 'abeyance' or gap, if the court by a strained construction prescribes another method for doing that thing, the decision will become open to serious objection and criticism."*

50. Aharon Barak (Former President, Supreme Court of Israel) while dealing with Purposive Constitutional Interpretation expounded the modern concept in following words:-

> *"The purpose of the constitutional text is to provide a solid foundation for national existence. It is to embody the basic aspirations of the people. It is to guide future*

> *generations by its basic choices. It is to control majorities and protect individual dignity and liberty. All these purposes cannot be fulfilled if the only guide to interpretation is the subjective purposes of the framers of the constitutional text. The constitution will not achieve its purposes if its vision is restricted to the horizons of its founding fathers. Even if we assume the broadest generalizations of subjective purpose, this may not suffice. It may not provide a solid foundation for modern national existence. It may be foreign to the basic aspirations of modern people. It may not be consistent with the dignity and liberty of the modern human being. A constitution must be wiser than its creators".*

51. Almost same views have been expressed by Aharon Barak in "Foreword: A Judge on Judging The Role of a Supreme Court in a Democracy", which are as under:-

> *"The original intent of the framers at the time of drafting is important. One cannot understand the present without understanding the past. The framers' intent lends historical depth to understanding the text in a way that honors the past. The intent of the constitutional authors, however, exists alongside the fundamental views and values of modern society at the time of interpretation. The constitution is intended to solve the problems of the contemporary person, to protect his or her freedom. It must contend with his or her needs. Therefore, in determining the constitution's purpose through interpretation, one must also take into account the values and principles that prevail at the time of interpretation, seeking syn-*

> *thesis and harmony between past intention and present principle."*

52. In this context, we may also profitably notice views of David Feldman expressed in "The Nature and Significance of Constitutional Legislation" published in 2013(129) L.Q.R. 343-358. Few principles to guide the interpretation of Constitution instruments were noted, which are as follows:-

> *"Despite differences between constitutions, and between types of provision within each constitution, diverse jurisdictions have shown considerable consistency in their selection of principles to guide the interpretation of constitutional instruments. First, constitutions are to be interpreted with the aid of their preambles, which are usually treated as forming an integral part of them.63 Secondly, a democratic constitution must be interpreted to "foster, develop and enrich", rather than undermine, democratic institutions.64 In particular, interpreters should give scope for a self-governing entity to make its own decisions, including decisions about the terms on which democratic institutions operate, subject to limits imposed by the constitution.65 Thirdly, constitutions are not to be interpreted with mechanical literalness. Interpreters must take account of the context, ultimate object, and textual setting of a provision, 66 bearing in mind that "the question is not what may be supposed to have been intended [by the framers], but what has been said". 67 Fourthly, according to at least some*

> *judges, constitutions are not to be interpreted as permitting institutions, including legislatures, to act in a way which "offends what I may call the social conscience of a sovereign democratic republic", because law must be regarded by ordinary people as "reasonable, just and fair"*
>
> *Nevertheless, these principles must be qualified by the recognition of differences between constitutions."*

53. Learned counsel for the appellant has also relied on the principles of Constitutional silence and Constitutional implications. It is submitted that Constitutional silence and Constitutional implications have also to be given due effect while interpreting Constitutional provisions. Reliance has been placed on Constitutional Bench Judgment of this Court in ***Manoj Narula Vs. Union of India, (2014) 9 SCC 1***. Constitution Bench in the above case while considering principles of Constitutional silence or abeyance laid down following in Paras 65-66:-

> *"**65**. The next principle that can be thought of is constitutional silence or silence of the Constitution or constitutional abeyance. The said principle is a progressive one and is applied as a recognised advanced constitutional practice. It has been recognised by the Court to fill up the gaps in respect of certain areas in the interest of justice and larger public interest. Liberalisation of*

the concept of locus standi for the purpose of development of public interest litigation to establish the rights of the have-nots or to prevent damages and protect environment is one such feature. Similarly, laying down guidelines as procedural safeguards in the matter of adoption of Indian children by foreigners in Laxmi Kant Pandey v. Union of India [(1987) 1 SCC 66] or issuance of guidelines pertaining to arrest in D.K. Basu v. State of W.B. [(1997) 1 SCC 416] or directions issued in Vishaka v. State of Rajasthan [(1997) 6 SCC 241] are some of the instances.

66. *In this context, it is profitable to refer to the authority in Bhanumati v. State of U.P. [(2010) 12 SCC 1] wherein this Court was dealing with the constitutional validity of the U.P. Panchayat Laws (Amendment) Act, 2007. One of the grounds for challenge was that there is no concept of no-confidence motion in the detailed constitutional provision under Part IX of the Constitution and, therefore, the incorporation of the said provision in the statute militates against the principles of Panchayati Raj institutions. That apart, reduction of one year in place of two years in Sections 15 and 28 of the Amendment Act was sought to be struck down as the said provision diluted the principle of stability and continuity which is the main purpose behind the object and reason of the constitutional amendment in Part IX of the Constitution. The Court, after referring to Articles 243-A, 243-C(1), (5), 243-D(4), 243-D(6), 243-F(1), 243-G, 243-H, 243-I(2), 243-J, 243-K(2) and (4) of the Constitution and further taking note of the amendment, came to hold that the statutory provision of no-confidence is contrary to Part IX of the Constitution. In that con-*

text, it has been held as follows: (Bhanumati case, SCC p. 17, paras 49-50)

> *"49. Apart from the aforesaid reasons, the arguments by the appellants cannot be accepted in view of a very well-known constitutional doctrine, namely, the constitutional doctrine of silence. Michael Foley in his treatise on The Silence of Constitutions (Routledge, London and New York) has argued that in a Constitution 'abeyances are valuable, therefore, not in spite of their obscurity but because of it. They are significant for the attitudes and approaches to the Constitution that they evoke, rather than the content or substance of their strictures'. (p. 10)*
>
> *50. The learned author elaborated this concept further by saying, "Despite the absence of any documentary or material form, these abeyances are real and are an integral part of any Constitution. What remains unwritten and indeterminate can be just as much responsible for the operational character and restraining quality of a Constitution as its more tangible and codified components.' (p. 82)"*

54. It is further relevant to notice that although above well known Constitutional doctrine was noticed but the Court held that express Constitutional provisions cannot be ignored while considering such doctrine and princi-

ples. After what has been stated above about above principles in Paras 65 and 66, following was held in Para 67:-

> *"**67**. The question that is to be posed here is whether taking recourse to this doctrine for the purpose of advancing constitutional culture, can a court read a disqualification to the already expressed disqualifications provided under the Constitution and the 1951 Act. The answer has to be in the inevitable negative, for there are express provisions stating the disqualifications and second, it would tantamount to crossing the boundaries of judicial review."*

55. Doctrine of Constitutional implications was also noticed by Constitution Bench in Para 68 to the following effect:-

> *"**68**. The next principle that we intend to discuss is the principle of constitutional implication. We are obliged to discuss this principle as Mr Dwivedi, learned Amicus Curiae, has put immense emphasis on the words "on the advice of the Prime Minister" occurring in Article 75(1) of the Constitution. It is his submission that these words are of immense significance and apposite meaning from the said words is required to be deduced to the effect that the Prime Minister is not constitutionally allowed to advise the President to make a person against whom charge has been framed for heinous or serious offences or offences pertaining to corruption as Minister in the Council of Ministers, regard being had to the sacrosanctity*

> *of the office and the oath prescribed under the Constitution. The learned Senior Counsel would submit that on many an occasion, this Court has expanded the horizon inherent in various articles by applying the doctrine of implication based on the constitutional scheme and the language employed in other provisions of the Constitution."*

56. There cannot be any dispute with regard to doctrine of silence and doctrine of implications as noticed above. But while applying above said doctrines in interpreting a Constitutional provision, express provision cannot be given a go-bye. The purpose and intent of Constitutional provisions especially the express language used which reflect a particular scheme has to give full effect to and express Constitutional scheme cannot be disregarded on any such principles.

57. From the above discussions, it is apparent that Constitutional interpretation has to be purposive taking into consideration the need of time and Constitutional principles. The intent of Constitution framers and object and purpose of Constitutional amendment always throw light on the Constitutional provisions but for interpreting a particular Constitutional provision, the Constitu-

tional Scheme and the express language employed cannot be given a go-bye. The purpose and intent of the Constitutional provisions have to be found from the very Constitutional provisions which are up for interpretation. We, thus, while interpreting Article 239AA have to keep in mind the purpose and object for which Sixty Ninth Constitution (Amendment) Act, 1991 was brought into force. After noticing the above principles, we now proceed further to examine the nature and content of the Constitutional provisions.

CONSTITUTIONAL SCHEME OF ARTICLE 239AA

58. To find out the Constitutional Scheme as delineated by Article 239AA, apart from looking into the express language of Article 239AA, we have also to look into the object and purpose of Constitutional provision, on which sufficient light is thrown by the object and reasons as contained in Sixty Ninth Constitutional Amendment as well as Balakrishnan's Report which was the basis of Sixty Ninth Constitutional Amendment. We have already referred to some relevant parts of Balakrishnan's report in

preceding paragraph of this judgment.

59. The task before Balakrishnan Report in words of Balakrishnan himself was to synchronise the two competing claims i.e. “On the one hand, effective administration of the National Capital is of vital importance to the National Government not only for ensuring a high degree of security and a high level of administrative efficiency but also for enabling the Central Government to discharge its national and international responsibilities”. To ensure this, it must necessarily have a complete and comprehensive control over the affairs of the capital. On the other hand, legitimate demand of the large population of the capital city for the democratic right of participation in the Government at the city level is too important to be ignored. We have endeavoured to design a Governmental structure for Delhi which we hope, would reconcile these two requirements”.

60. For administration of Delhi, there has been earlier a Parliamentary Legislation. Legislative Assembly functioned in Delhi after the enforcement of the

Constitution till 01.11.1956. Article 239A which was inserted by Constitutional Fourteenth Amendment Act, 1962 had already contemplated that Parliament may by law provide for Legislative Assembly for a Union territory. While considering the salient features of the proposed structure, following was stated in Para 6.7.2 of the Report:

> *"6.7.2 As we have already stated, any governmental set-up for Delhi should ensure that the Union is not fettered or hampered in any way in the discharge of its own special responsibilities in relation to the administration of the national capital by a constitutional division of powers, functions and responsibilities between the union and the Delhi Administration. The only way of ensuring this arrangement is to keep Delhi as a Union territory for the purposes of the Constitution. Thereby, the provision in article 246(4) of the Constitution will automatically ensure that Parliament has concurrent and overriding powers to make laws for Delhi on all matters, including those relateable to the State List. Correspondingly, the Union Executive can exercise executive powers in respect of all such matters subject to the provisions of any Central law governing the matter. We, therefore, recommend that even after the creation of a Legislative Assembly and Council of Ministers for Delhi it should continue to be a Union territory for the purposes of the Constitution."*

61. The Report also highlighted the necessity of certain subjects being kept out of jurisdiction of Legislative Assembly of Delhi which were to be dealt with by the Union.

62. At this juncture, it is also relevant to note the issue pertaining to admissibility of the Balakrishnan Report. The issue regarding admissibility of Parliamentary Committee's Report in proceeding under Article 32/Article 136 of the Constitution of India was engaging attention of the Constitution Bench when hearing in these matters were going on. The Constitution Bench has delivered its judgment in Writ Petition (C) No. 558 of 2012 ***Kalpna Mehta and others Vs. Union of India and others*** on 09.05.2018. The Constitution Bench had held that Parliamentary Committee Reports can be looked into and referred to by this Court in exercise of its jurisdiction under Article 32/136. The Chief Justice delivering his opinion(for himself and on behalf of Justice A.M. Khanwilkar) in the conclusions recorded in Paragraph 149 in sub paragraph (iv) and (vii), has laid

down:

> "**(iv)** In a litigation before this Court either under Article 32 or Article 136 of the Constitution of India can take on record the report of the Parliamentary Standing Committee. However, the Court while taking the report on record as a material can take aid of as long as there is no contest or the dispute on the content because such a contest would invite the court to render a verdict either accepting the report in toto or in part or rejecting it in entirety.
>
> **(vii)** In a public interest litigation where the adversarial position is absent, the Court can take aid of the said report in larger interest of the society to subserve the cause of welfare State and in any furtherance to rights provided under the Constitution or any statutory provision."

63. **Justice D.Y. Chandrachud** (one of us) answering the reference has held at Page 86:

> "***(i)*** *As a matter of principle, there is no reason why reliance upon the report of a Parliamentary Standing Committee cannot be placed in proceedings under Article 32 or Article 136 of the Constitution;*
>
> ***(ii)*** *Once the report of a Parliamentary Committee has been published, reference to it in the course of judicial proceedings will not constitute a breach of parliamentary privilege. The validity of the report is not called into question in*

the court. No Member of Parliament or person can be made liable for what is stated in the course of the proceedings before a Parliamentary Committee or for a vote tendered or given; and

(iii) *However, when a matter before the court assumes a contentious character, a finding of fact by the court must be premised on the evidence adduced in the judicial proceeding."*

64. Myself **(Justice Ashok Bhushan)** delivering my concurring opinion has also laid down following in Paragraph 151(ii,vii):

"***(ii)*** *The publication of the reports not being only permitted, but also are being encouraged by the Parliament. The general public are keenly interested in knowing about the parliamentary proceedings including parliamentary reports which are steps towards the governance of the country. The right to know about the reports only arises when they have been published for use of the public in general.*

(vii) *Both the parties have not disputed that Parliamentary Reports can be used for the purposes of legislative history of a Statute as well as for considering the statement made by a minister. When there is no breach of privilege in considering the Parliamentary materials and reports of the committee by the Court for the above two purposes, we fail to see any valid reason for not accepting the submission of*

> *the petitioner that Courts are not debarred from accepting the Parliamentary materials and reports, on record, before it, provided the Court does not proceed to permit the parties to question and impeach the reports."*

65. Thus, it is now well settled that Parliamentary Committee Report can be looked into to find out the intent and purpose of legislation, in the present case, Sixty Ninth Constitutional Amendment.

66. The statement of object & reasons of Sixty Ninth Amendment Act has also referred to the Balakrishnan's Report. While referring to the Balakrishnan's Report, following has been noted:

> *"The Committee went into the matter in great detail and considered the issues after holding discussions with various individuals, associations, political parties and other experts and taking into account the arrangements in the National Capitals of other countries with a federal set-up and also the debates in the Constituent Assembly as also the reports by earlier Committees and Commissions. After such detailed inquiry and examination, it recommended that Delhi should continue to be a Union territory and provided with a Legislative Assembly and a Council of Ministers responsible to such Assembly with appropriate powers to deal with matters of concern to the common man. The Committee also recommended that with a view to ensure*

stability and permanence the arrangements should be incorporated in the Constitution to give the National Capital a special status among the Union territories.”

67. The recommendation of the Committee that Delhi should continue to be Union territory providing with a Legislative Assembly and Council of Ministers responsible to such Assembly was thus accepted and to give effect the same Article 239AA was inserted in the Constitution. There is no denying that one of the purposes for insertion of Article 239AA is to permit a democratic and republican form of Government. The principle of cabinet responsibility was the Constitutional intent which has to be kept in mind while interpreting the Constitutional provisions.

68. There are many facets of Article 239AA which need elaborate consideration. Different facets shall be separately dealt under following heads:

A LEGISLATIVE POWER OF PARLIAMENT AND THAT OF GNCTD

B EXECUTIVE POWER OF UNINON (PRESIDENT/ LG) AND THAT OF GNCTD

C PROVISO TO ARTICLE 239AA
(i) AID AND ADVICE
(ii) IN MATTER

D WHETHER CONCURRENCE OF LG REQUIRED FOR EXCLUSIVE DECISION OF GNCTD

E COMMUNICATION OF DECISION OF COUNCIL OF MINISTERS / MINISTER AND LG, ITS PURPOSE AND OBJECT

F ADMINISTARTIVE FUNCTION OF THE GNCTD AND LG AS DELINEATED BY 1991 ACT AND THE TRANSACTIONS OF BUSINESS RULEs, 1993.

A. LEGISLATIVE POWER OF PARLIAMENT AND THAT OF GNCTD

69. Clause (3) of the 239AA deals with power to make laws for the whole or any part of the National Territory of Delhi by the Legislative Assembly as well as by Parliament. Clause (3) of Article 239 is extracted for ready reference:

> *"(3) (a) Subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State of List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2, and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2,and 18.*

(b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof.

(c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void;

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent such law shall prevail in National Capital Territory :

Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly.”

70. The above provision makes it clear that Legislative Assembly shall have power to make laws in respect of any of the matters enumerated in the State List or in the

Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of the List.

71. The provision is very clear which empowers the Legislative Assembly to make laws with respect to any of the matters enumerated in the State List or in the Concurrent List except the excluded entries. One of the issue is that power to make laws in State List or in Concurrent List is hedged by phrase “in so far as any such matter is applicable to Union territories”.

72. A look of the Entries in List II and List III indicates that there is no mention of Union Territory. A perusal of the List II and III indicates that although in various entries there is specific mention of word “State” but there is no express reference of “Union Territory” in any of the entries. For example, in List II Entry 12, 26, 37, 38, 39, 40, 41, 42 and 43, there is specific mention of word “State”. Similarly, in List III Entry 3, 4 and 43 there is mention of word “State”. The above phrase “in

so far as any such matter is applicable to Union Territory" is inconsequential. The reasons are two fold. On the commencement of the Constitution, there was no concept of Union Territories and there were only Part A, B, C and D States. After Seventh Constitutional Amendment, where First Schedule as well as Article 2 of the Constitution were amended which included mention of Union Territory both in Article 1 as well as in First Schedule. Thus, the above phrase was used to facilitate the automatic conferment of powers to make laws for Delhi on all matters including those relatable to the State List and Concurrent List except where an entry indicates that its applicability to the Union Territory is excluded by implication or any express Constitutional provision.

73. Thus, there is no difficulty in comprehending the Legislative power of the NCTD as expressly spelled out in Article 239AA. Now, we turn to find out Legislative power of the Parliament. Sub-clause (b) of Clause (3) of the Article 239AA mentions "nothing in sub clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for

a Union Territory or any part thereof.

74. It is relevant to note that sub clause (3) begins with the word "subject to the provisions of this Constitution". Article 246 thus, by Chapter 1st of the Part X1 of the Constitution dealing with the Legislative relations has to be looked into and to be read alongwith Article 239AA clause (3). Article 246 provides as follows:

> *"246. Subject-matter of laws made by Parliament and by the Legislatures of States.-*
>
> *(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").*
>
> *(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").*

> *(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").*
>
> *(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List."*

75. Article 246 clause (4) expressly provides that Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State; notwithstanding that such matter is a matter enumerated in the State List.

76. The Union Territories are part of the India which are not included in any State. Thus, Parliament will have power to make laws for any matter with regard to Union territories. In clause (4) of Article 246 by Seventh Constitutional Amendment, in place of words "in

Part A or Part B of the First Schedule" the words "in State" have been substituted. Thus, overriding power of the Parliament was provided with regard to Part C and D States on enforcement of the Constitution which Constitutional Scheme is continued after amendment made by Seventh Constitutional Amendment.

77. The issue regarding constitutional scheme envisaged for Delhi consequent to insertion of Article 239AA of Sixty Ninth Constitution Amendment came for consideration before a Nine Judge Bench of this Court in ***NDMC Vs. State of Punjab (1997) 7 SCC 339***. The issue in the NDMC case was whether the property tax levied by NDMC On the immovable properties of States situated within the Union Territory of Delhi would be covered by the exemption provided in Article 289 of the Constitution of India. Delhi High Court had been pleased to hold that the exemption under Article 289 would apply and the assessment and demand notices of NDMC were quashed. The appeal came to be decided by a Nine Judge Bench of this Court.

78. The majority opinion was delivery by Justice B.P. Jeevan Reddy. The majority held that States and Union territories are different entities, which is clear from the scheme of Articles 245 and 246. Following was laid down in Paragraphs 152, 155 and 160:-

> ……*152. On a consideration of rival contentions, we are inclined to agree with the respondents-States. The States put together do not exhaust the territory of India. There are certain territories which do not form part of any State and yet are the territories of the Union.* ***That the States and the Union Territories are different entities, is evident from clause (2) of Article 1 – indeed from the entire scheme of the Constitution.*** *Article 245(1) says that while Parliament may make laws for the whole or any part of the territory of India, the legislature of a State may make laws for the whole or any part of the State. Article 1(2) read with Article 245(1) shows that so far as the Union Territories are concerned, the only law-making body is Parliament. The legislature of a State cannot make any law for a Union Territory; it can make laws only for that State. Clauses (1), (2) and (3) of Article 246 speak of division of legislative powers between Parliament and State legislatures.* ***This division is only between Parliament and the State legislatures, i.e., between the Union and the States. There is no division of legislative powers between the Union and Union Territories.***

Similarly, there is no division of powers between States and Union Territories. So far as the Union Territories are concerned, it is clause (4) of Article 246 that is relevant. It says that Parliament has the power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List. Now, the Union Territory is not included in the territory of any State. If so, Parliament is the only law-making body available for such Union Territories. *It is equally relevant to mention that the Constitution, as originally enacted, did not provide for a legislature for any of the Part 'C' States (or, for that matter, Part 'D' States). It is only by virtue of the Government of Part 'C' States Act, 1951 that some Part 'C' States including Delhi got a legislature. This was put an end to by the States Reorganisation Act, 1956. In 1962, the Constitution Fourteenth (Amendment) Act did provide for creation/constitution of legislatures for Union Territories (excluding, of course, Delhi) but even here the Constitution did not itself provide for legislatures for those Part 'C' States; it merely empowered Parliament to provide for the same by making a law.* ***In the year 1991, the Constitution did provide for a legislature for the Union Territory of Delhi [National Capital Territory of Delhi] by the Sixty-Ninth (Amendment) Act (Article 239-AA) but even here the legislature so created was not a full-fledged legislature nor did it have the effect of — assuming that it could — lift the National Capital Territory of Delhi from Union Territory category to the***

category of States within the meaning of Chapter I of Part XI of the Constitution. All this necessarily means that so far as the Union Territories are concerned, there is no such thing as List I, List II or List III. The only legislative body is Parliament — or a legislative body created by it. Parliament can make any law in respect of the said territories — subject, of course, to constitutional limitations other than those specified in Chapter I of Part XI of the Constitution. Above all, the Union Territories are not "States" as contemplated by Chapter I of Part XI; they are the territories of the Union falling outside the territories of the States. Once the Union Territory is a part of the Union and not part of any State, it follows that any tax levied by its legislative body is Union taxation. Admittedly, it cannot be called "State taxation" — and under the constitutional scheme, there is no third kind of taxation. Either it is Union taxation or State taxation**……**

…… *155. In this connection, it is necessary to remember that all the Union Territories are not situated alike. There are certain Union Territories (i.e., Andaman and Nicobar Islands and Chandigarh) for which there can be no legislature at all — as on today. There is a second category of Union Territories covered by Article 239-A (which applied to Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry — now, of course, only Pondicherry survives in this category, the rest having acquired Statehood) which have legislatures by courtesy of Parliament. Parliament can, by law, provide for constitution of*

legislatures for these States and confer upon these legislatures such powers, as it may think appropriate. Parliament had created legislatures for these Union Territories under the "the Government of Union Territories Act, 1963", empowering them to make laws with respect to matters in List II and List III, but subject to its overriding power. The third category is Delhi. It had no legislature with effect from 1-11-1956 until one has been created under and by virtue of the Constitution Sixty-Ninth (Amendment) Act, 1991 which introduced Article 239-AA. We have already dealt with the special features of Article 239-AA and need not repeat it. Indeed, a reference to Article 239-B read with clause (8) of Article 239-AA shows how the Union Territory of Delhi is in a class by itself but is certainly not a State within the meaning of Article 246 or Part VI of the Constitution. In sum, it is also a territory governed by clause (4) of Article 246. ***As pointed out by the learned Attorney General, various Union Territories are in different stages of evolution. Some have already acquired Statehood and some may be on the way to it. The fact, however, remains that those surviving as Union Territories are governed by Article 246(4) notwithstanding the differences in their respective set-ups — and Delhi, now called the "National Capital Territory of Delhi", is yet a Union Territory*** *……"*

……160. It is then argued for the appellants that if the above view is taken, it would lead to an inconsistency. The reasoning in this behalf runs thus: a law made by the legislature of a Union

> *Territory levying taxes on lands and buildings would be "State taxation", but if the same tax is levied by a law made by Parliament, it is being characterised as "Union taxation"; this is indeed a curious and inconsistent position, say the learned counsel for the appellants. In our opinion, however, the very premise upon which this argument is urged is incorrect.* ***A tax levied under a law made by a legislature of a Union Territory cannot be called "State taxation" for the simple reason that Union Territory is not a "State" within the meaning of Article 246 (or for that matter, Chapter I of Part XI) or Part VI or Articles 285 to 289*****……"**

79. After examining the Constitutional Scheme delineated by Article 239AA, another constitutional principle had been laid down by the Constitution Bench that Union territories are governed by Article 246(4) notwithstanding their differences in respective set-ups and Delhi, now called the "National Capital Territory of Delhi" is yet a Union Territory. The Constitution Bench had also recognised that the Union territory of Delhi is in a class by itself, certainly not a State. Legislative power of the Parliament was held to cover Union Territories including Delhi.

80. The above clearly indicates that Parliament has power to make laws for NCTD with respect to any of the matter enumerated in State List or Concurrent List. The Legislative Assembly of NCT has legislative power with respect to any of the matters enumerated in the State List or in the Concurrent List excluding the excepted entries of State List.

B. EXECUTIVE POWERS OF THE UNION(PRESIDENT /LG) AND THAT OF THE GNCTD

81. Although there is no express provision in the Constitutional Scheme conferring executive power to LG of the Union territory of Delhi, as has been conferred by the Union under Article 73 and conferred on the State under Article 154. Under the Constitutional Scheme executive power is co-extensive with the Legislative power. The Executive power is given to give effect to Legislative enactments. Policy of legislation can be given effect to only by executive machinery. The executive power has to be conceded to fulfill the constitutionally conferred democratic mandate. Clause (4)

of Article 239AA deals with the exercise of executive power by the Council of Ministers with the Chief Minister as the head to aid and advice the LG in exercise of the above functions. The submission of the respondent is that executive power in relation to all matters contained in List II and List III is vested in the President.

82. The Union and States can exercise Executive power on the subjects on which they have power to legislate. This Court in ***Rai Sahib Ram Jawaya Kapur and Others Vs. State of Punjab, AIR 1955 SC 549*** while considering the extent of the Executive power in Paragraph 7 held following:-

> *"**7.** Article 73 of the Constitution relates to the executive powers of the Union, while the corresponding provision in regard to the executive powers of a State is contained in Article 162. The provisions of these articles are analogous to those of Sections 8 and 49(2) respectively of the Government of India Act, 1935 and lay down the rule of distribution of executive powers between the Union and the States, following, the same analogy as is provided in regard to the distribution of legislative powers between them. Article 162, with which we are directly concerned in this case, lays down:*
>
> > *"Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect*

to which the legislature of the State has power to make laws:

Provided that in any matter with respect to which the legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

Thus under this article the executive authority of the State is exclusive in respect to matters enumerated in List II of Seventh Schedule. The authority also extends to the Concurrent List except as provided in the Constitution itself or in any law passed by Parliament. Similarly, Article 73 provides that the executive powers of the Union shall extend to matters with respect to which Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or any agreement. The proviso engrafted on clause (1) further lays down that although with regard to the matters in the Concurrent List the executive authority shall be ordinarily left to the State it would be open to Parliament to provide that in exceptional cases the executive power of the Union shall extend to these matters also. Neither of these articles contain any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on the other. They do not mean, as Mr Pathak seems to suggest, that it is only when Parliament or the State Legislature has legis-

> *lated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them. On the other hand, the language of Article 172 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. The same principle underlies Article 73 of the Constitution. These provisions of the Constitution therefore do not lend any support to Mr Pathak's contention."*

83. The Constitution Bench has also in above case laid down that in our Constitution; we have adopted the same system of Parliamentary democracy as in England. In this regard, following was held in Para Nos. 13 and 14:-

> *"**13**. The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of so-*

cial and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State.

14. *In India, as in England, the executive has to act subject to the control of the legislature; but in what way is this control exercised by the legislature? Under Article 53(1) of our Constitution, the executive power of the Union is vested in the President but under Article 75 there is to be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The President has thus been made a formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet. The same provisions obtain in regard to the Government of States; the Governor or the Rajpramukh, as the case may be, occupies the position of the head of the executive in the State but it is virtually the Council of Ministers in each State that carries on the executive Government. In the Indian Constitution, therefore, we have the same system of parliamentary executive as in England and the Council of Ministers consisting, as it does, of the members of the legislature is, like the British Cabinet, "a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part". The Cabinet enjoying, as it does, a majority in the legislature concentrates in itself the virtual control of both legislative and executive functions; and as the Ministers constituting the Cabinet are presumably agreed on fundamentals and act on the principle of collective responsibility, the most important questions of policy are all formulated by them."*

84. The appellant relying on Article 73 of the Constitution had submitted that Article 73 lays down the principle that while there may exist under the Constitution concurrent legislative powers on two different federal units, there can never be any concurrent executive powers. It was further submitted that the above principle equally applies to matters listed in List II and List III of the Constitution of India for NCTD. Referring to the Article 239AA(3)(b), it is contended that the said provision confers power on Parliament to enact legislations in matters in both state list and concurrent lists. Such power is also available under Article 246. However, it does not follow from the above that the said provision also confers executive powers in relation to matters in the state list and concurrent list. It is further submitted that Parliament may by law confer executive powers in relation to matters in the concurrent list on the Union Government for States, it may also do so in relation to the NCTD. But, if such thing is not done, Union Government will, as a general rule, have no executive powers in respect of matters under List II (except the

excluded Entries) and it is the GNCTD, which shall enjoy exclusive executive powers. We are of the view that the above interpretation as put up by the appellant on Constitutional provisions cannot be accepted. The principle is well established that Executive powers co-exist with the Legislative powers. Reference to Article 73 has been made in this context, which need to be noted. Article 73 provides as follows:-

> *"**73.** (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—*
>
> *(a) to the matters with respect to which Parliament has power to make laws; and*
>
> *(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:*
>
> *Provided that the executive power referred to in subclause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.*
>
> *(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power*

> *to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.”*

85. The proviso to Article 73(1) provides that the executive power referred to in subclause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws. Obviously, the proviso refers to the Concurrent List where both Parliament and State has power to make laws. Executive power in reference to Concurrent List has been deliberately excluded to avoid any duplicacy in exercise of power by two authorities. The Article 73 as it stood prior to Constitution Seventh Amendment Act, 1956 contained the expression after the word State “specified in Part A or Part B of the First Schedule”. Thus, the executive power was excluded of the Union only with regard to Part A and Part B States alone. Thus, when the Constitution was enforced, executive power of Union in reference to Part C States was not excluded with regard to Concurrent List also. Part C States hav-

ing been substituted as now by Union Territories by Constitution Seventh Amendment Act. the word “State” in Proviso to Article 73 cannot be read to include Union Territory. Reading the word Union Territory within the word “State” in proviso to Article 73(1) shall not be in accordance with Scheme of Part VIII (Union Territories) of the Constitution. Union Territories are administered by the President. Exercise of executive power of the Union through President is an accepted principle with regard to Union Territories. The above interpretation is also reinforced due to another reason. Under Article 239AA(4) proviso, the Lieutenant Governor, in case of difference of opinion, can make a reference to the President for decision and has to act according to the decision given thereon. The President, thus, with regard to a particular executive action, which has been referred, has exclusive jurisdiction to take a decision, which both Council of Ministers as well as Lieutenant Governor has to follow. The provision does not indicate that power of the President is confined only to executive actions which are mentioned in List II. When the President as provided by the

Constitutional Scheme, is entitled to take executive decision on any matter irrespective of the fact whether such executive decision taken by the Council of Ministers or Ministers related to matters covered by List II and List III, the executive power to Union through President cannot be confined to List II. Overriding power to the Union even on the executive matters has to be conceded to be there as per Constitutional scheme. It is another matter that for exercise of executive powers by the Union through President and by Council of Ministers, headed by Chief Minister of NCTD, the Constitution itself indicates a scheme which advances the constitutional objectives and provide a mechanism for exercise of executive powers, which aspect shall be, however, further elaborated while considering sub-clause(4) of Article 239AA. Legislative power of the Union is co-extensive with its executive power in relation to NCT is further indicated by the provisions of the Government of National Capital Territory of Delhi Act, 1991. The insertion of Article 239AA by the Constitution 69th Amendment has been followed by enactment of the Government of National Capital Territory of Delhi

Act, 1991 which Act was enacted by the Parliament in exercise of power under Article 239AA(7)(a) of the Constitution. Section 49 of the Act, 1991 provides as follows:

> "***49. Relation of Lieutenant Governor and his Ministers to President.-*** *Notwithstanding anything in this Act, the Lieutenant Governor and his Council of Ministers shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by the President."*

86. Legislative power of the Union is exercised by the President as per the constitutional scheme and Section 49 itself indicates that Parliament clearly envisaged Council of Ministers and the Lieutenant Governor shall be under the general control of, and comply with such particular directions issued by the President from time to time. The power of the President to issue direction is not limited in any manner so as to put any restriction on the executive power of the Union.

87. The President further is empowered under Section 44 of Act, 1991 to make rules for the allocation of business to the Ministers in so far as it is business with respect

to which the Lieutenant Governor is required to act on the aid and advice of his Council of Ministers. As per Article 239AA sub-clause (4) read with business rules, the manner and procedure of conduct of business including executive functions of GNCTD has to be administered. Although the Union ordinarily does not interfere with or meddle with the day to day functions of the GNCTD which is in tune with the constitutional scheme as delineated by Article 239AA and to give meaning and purpose to the Cabinet form of Government brought in place in the National Capital of Territory. But as the overriding legislative power of the Parliament is conceded in the constitutional scheme, overriding executive power has also to be conceded even though such power is not exercised by the Union in the day to day functioning of the GNCTD. We thus conclude that executive power of the Union is co-extensive on all subjects referable to List I and List II on which Council of Ministers and the NCTD has also executive powers.

88. Learned counsel for the appellants have also referred to Article 239AB. One of the submissions raised by the

appellants is that the executive power can be exercised by Union or the Lieutenant Governor only in the circumstances as mentioned in Article 239AB i.e. only when constitutional machinery in National Capital Territory has failed and National Capital Territory is unable to carry out the administration in accordance with the provisions of Article 239AB. Article 239AB was also added by Constitution Sixty Ninth Amendment Act, which is as follows:-

> "***239AB. Provision in case of failure of constitutional machinery.-*** *If the President, on receipt of a report from the Lieutenant Governor or otherwise, is satisfied—*
>
> *(a) that a situation has arisen in which the administration of the National Capital Territory* ***cannot be carried on in accordance with the provisions of Article 239AA*** *or of any law made in pursuance of that article; or*
>
> *(b) that for the proper administration of the National Capital Territory it is necessary or expedient so to do, the President may by order suspend the operation of any provision of Article 239AA or of all or any of the provisions of any law made in pursuance of that article for such period and subject to such conditions as may be specified in such law and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the National Capital Territory in accordance with the provisions of Article 239 and Article 239AA*."

89. The provision of the Article 239AB is a special provision where President may suspend the provision of Article 239AA or any of the provision of any law made in pursuance of that article. The above provision is akin to Article 356, the subject of both the provisions, i.e., Article 239AB and Article 356 is same, i.e., "provision in case of failure of constitutional machinery". The power under Article 356/239AA is conferred on Union in larger interest of State. The submission that executive power can be exercised by the Union through President only when power under Article 239AB is exercised, cannot be accepted. The provision of Article 239AB is for entirely different purpose, and is not a provision regarding exercise of general executive power by the Union.

Article 239AA(4) Proviso

90. The interpretation of the proviso to sub-clause(4) is the main **bane** of contention between the parties. There are two broad aspects which need detailed consideration. The first issue is the concept of the words "aid and ad-

vice" as contained in sub-clause (4) of Article 239AA. The appellants case is that the content and meaning of aid and advice is same as has been used in Article 74 and Article 163 of the Constitution. Article 163 Sub-clause(1) is extracted for ready reference:-

> **163.Council of Ministers to aid and advise Governor:-** (1) There shall be a council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion.

91. The appellant's have placed reliance on Constitution Bench judgment of this Court in ***Shamsher Singh Vs. State of Punjab and Another, (1974) 2 SCC 831.*** The Constitution Bench of this Court in the above case had occasion to examine the phrase "aid and advice" as used in Article 163 of the Constitution. This Court found that our Constitution embodies generally the Parliamentary system of the Government of British model both for Union and the States. Both President and Governor have to act on the basis of aid and advice received from the Council of the Ministers except when they have to exercise their func-

tion in their discretion. Paras 27, 28, 30, 32 and 33, which are relevant are quoted as follows:-

> *"**27**. Our Constitution embodies generally the Parliamentary or Cabinet system of Government of the British model both for the Union and the States. Under this system the President is the constitutional or formal head of the Union and he exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers. Article 103 is an exception to the aid and advice of the Council of Ministers because it specifically provides that the President acts only according to the opinion of the Election Commission. This is when any question arises as to whether a Member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of Article 102.*
>
> ***28**. Under the Cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.*
>
> ***30**. In all cases in which the President or the Governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his Council of Ministers he does so by making rules for convenient transaction of the business of the Government of India or the Government of*

the State respectively or by allocation among his Ministers of the said business, in accordance with Articles 77(3) and 166(3) respectively. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360 the satisfaction required by the Constitution is not the personal satisfaction of the President or of the Governor but is the satisfaction of the President or of the Governor in the constitutional sense under the Cabinet system of Government. The reasons are these. It is the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. Neither Article 77(3) nor Article 166(3) provides for any delegation of power. Both Articles 77(3) and 166(3) provide that the President under Article 77(3) and the Governor under Article 166(3) shall make rules for the more convenient transaction of the business of the Government and the allocation of business among the Ministers of the said business. The Rules of Business and the allocation among the Ministers of the said business all indicate that the decision of any Minister or officer under the Rules of Business made under these two articles viz. Article 77(3) in the case of the President and Article 166(3) in the case of the Governor of the State is the decision of the President or the Governor respectively.

32. *It is a fundamental principle of English Constitutional law that Ministers must accept responsibility for every executive act. In England the Sovereign never acts on his*

own responsibility. The power of the Sovereign is conditioned by the practical rule that the Crown must find advisers to bear responsibility for his action. Those advisers must have the confidence of the House of Commons. This rule of English Constitutional law is incorporated in our Constitution. The Indian Constitution envisages a Parliamentary and responsible form of Government at the Centre and in the States and not a Presidential form of Government. The powers of the Governor as the constitutional head are not different.

***33**. This Court has consistently taken the view that the powers of the President and the powers of the Governor are similar to the powers of the Crown under the British Parliamentary system. (See Ram Jawaya Kapur v. State of Punjab, A. Sanjeevi Naidu v. State of Madras4, U.N.R. Rao v. Indira Gandhi5). In Ram Jawaya Kapur case Mukherjea, C.J. speaking for the Court stated the legal position as follows. The Executive has the primary responsibility for the formulation of governmental policy and its transmission into law. The condition precedent to the exercise of this responsibility is that the Executive retains the confidence of the legislative branch of the State. The initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, the carrying on of the general administration of the State are all executive functions. The Executive is to act subject to the control of the Legislature. The executive power of the Union is vested in the President. The President is the formal or constitutional head of the Executive. The real executive powers are vested in the Ministers of the Cabinet. There is a Council of*

Ministers with the Prime Minister as the head to aid and advise the President in the exercise of his functions."

92. It is well settled that the Governor is to act on aid and advice of the Council of Ministers and as contemplated under Article 163, according to the Constitutional scheme, Governor is not free to disregard the aid and advice of the Council of Ministers except when he is required to exercise his function in his discretion. There cannot be any dispute to the proposition as laid down by this Court in ***Shamsher Singh (supra)*** and followed thereafter in number of cases. Whether the "aid and advice" as used in Article 239AA(4) has to be given the same meaning as is contained in Article 163 and Article 74 is the question to be answered. The appellant's case is that Constitution scheme as delineated in Article 239AA itself having accepted Westminster model of Governing system, "aid and advice" of the Council of Ministers is binding on the LG and he cannot act contrary to the aid and advice and is bound to follow the aid and advice. It is submitted that any other interpretation shall run contrary to the very concept of Parliamentary democracy,

which is basic feature of the Constitution. There could have been no second opinion had the proviso to sub-clause(4) of Article 239AA was not there. The aid and advice as given by Council of Ministers as referred to in sub-clause(4) has to be followed by the Lieutenant Governor unless he decides to exercise his power given in proviso of sub-clause(4) of Article 239AA. The proviso is an exception to the power as given in sub-clause(4). A case when falls within the proviso, the "aid and advice" of the Council of Ministers as contemplated under sub-clause (4) is not to be adhered to and a reference can be made by Lieutenant Governor. This is an express Constitution scheme, which is delineated by sub-clause(4) of Article 239AA proviso. It is relevant to note that the scheme which is reflected by sub-clause(4) of Article 239AA proviso is the same scheme which is contained under Section 44 of the Government of Union Territories Act, 1963. Section 44 of the Act is quoted below:-

> *"There shall be a Council of Ministers in each Union Territory with the Chief Minister at the head to aid and advise the Administrator in the exercise of his functions in relation to matters with respect to which the Legislative Assembly of*

the Union Territory has power to make laws except in so far as he is required by or under this Act to act in his discretion or by or under any law to exercise any judicial or quasi-judicial functions.

Provided that in case of difference of opinion between the Administrator and his Ministers on any matter, the Administrator shall refer it to the President for decision and act according to the decision given thereon by the President, and pending such decision, it shall be competent for the Administrator in any case where the matter in his opinion is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as it deems necessary".

93. Thus, with regard to Union Territories, the exception as carved out in proviso was very much there since before. Thus, the scheme as contained in proviso was well known scheme applicable in the Union Territories. When there is an express exception when the aid and advice given by the Council of Ministers is not binding on the Lieutenant Governor and he can refer it to the President and pending such decision in case of urgency take his own decision, we are not persuaded to accept that aid and advice is binding on the Governor under Article 163. The Legislative Assembly of the NCTD being representing the

views of elected members their opinion and decision has to be respected and in all cases, except where Lieutenant Governor decides to make a reference.

94. Another issue which needs consideration is the meaning of the word “any matter” as occurring in first sentence of the proviso to sub-clause(4). Another issue which needs to be considered in this context is as to whether the operation of the proviso to sub-clause(4) is confined to only few categories of cases as contended by appellant or the proviso can be relied by Lieutenant Governor in all executive decisions taken by Council of Ministers. According to appellants, the proviso operates in the following areas, when the decision of the Council of Ministers of the NCTD:-

a. is outside the bounds of executive power under Article 239AA(4);

b. impedes or prejudices the lawful exercise of the executive power of the Union;

c. is contrary to the laws of the Parliament;

d. falls within Rule 23 matters such as -

i. matters which affect the peace and tranquillity of the Capital;

ii. interests of any minority community;

iii. relationship with the higher judiciary;

iv. any other matters of administrative importance which the Chief Minister may consider necessary.

95. Thus, appellants contended that apart from above categories mentioned above, proviso has no application in any other matter. We are not able to read any such restriction in the proviso as contended by the appellants. The proviso uses the phrase "any matter" in the first sentence, i.e., "provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter……." The word "any matter" are words of wide import and the language of Article 239AA(4) does not admit any kind of restriction in operation of proviso. There is nothing in the provision of sub-clause (4) to read any restriction or limitation on the phrase "any matter" occurring in proviso. The word "any matter"

has also been used in Article 239AA(3) while providing for power to make laws. Sub-clause(3)(a) reads "subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters stated in the State List or in the Concurrent List in so far as any such matter is applicable to Union Territories……". Further, sub-clause(b) provides "Nothing in sub-clause(a) shall derogate from the powers of Parliament under the Constitution to make laws with respect to any matter for a Union Territory or any part thereof". The use of word "any matter" in above two clauses clearly indicate that it is not used in any limited or restricted manner rather use of word "any matter" is used referring to the entire extent of legislation. When the same phrase has been used in proviso to sub-clause(4), we are of the view that similar interpretation has to be given to the same word used in earlier part of the same Article.

96. In this context, we refer to ***Tej Kiran Jain and Others Vs. N. Sanjiva Reddy and Others, (1970) 2 SCC 272.*** In the above case, this Court had occasion to consider the word "any thing" as used in Article 105(2) of the Constitution of India. This Court stated following in Paragraph 8:-

> *"**8.** In our judgment it is not possible to read the provisions of the article in the way suggested. The article means what it says in language which could not be plainer. The article confers immunity inter alia in respect of "anything said ... in Parliament". The word "anything" is of the widest import and is equivalent to "everything". The only limitation arises from the words "in Parliament" which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court this immunity is not only complete but is as it should be……."*

97. From the above discussions, it is thus clear that aid and advice of the Council of Ministers is binding on the Lieutenant Governor except when he decides to exercise his power given in proviso of sub-clause(4) of Article 239AA. In the matters, where power under Proviso has not

been exercised, aid and advice of the Council of Ministers is binding on the Lieutenant Governor. We are of the view that proviso to sub-clause(4) of Article 239AA cannot be given any other interpretation relying on any principle of Parliamentary democracy or any system of Government or any principle of Constitutional silence or implications.

98. The submission of the appellants that proviso to sub-clause(4) of Article 239AA envisages an extreme and unusual situation and is not meant to be a norm, is substantially correct. The exercise of power under Proviso cannot be a routine affair and it is only in cases where Lieutenant Governor on due consideration of a particular decision of the Council of Ministers/Ministers, decides to make a reference so that the decision be not implemented. The overall exercise of administration of Union Territory is conferred on President, which is clear from the provisions contained in Part VIII of the Constitution. Although, it was contended by the appellant that Article 239 is not applicable with regard to NCTD after Article 239AA has been inserted in the Constitution.

The above submission cannot be accepted on account of the express provisions which are mentioned under Article 239AA and Article 239AB itself. Article 239AA sub-clause(1) itself contemplates that administrator appointed under Article 239 shall be designated as the Lieutenant Governor. Thus the administrator appointed under Article 239 is designated as LG. Article 239AB is also applicable to NCTD. Article 239AB in turn refers to any apply Article 239. The provisions contained in Part VIII of the Constitution have to be looked into in its entirety. Thus, all the provisions of Part VIII has to be cumulatively read while finding out the intention of the Constitution makers, which makes it clear that Article 239 is also applicable to the NCTD.

Whether concurrence of Lieutenant Governor is required on executive decision of GNCTD.

99. The constitutional provision of Article 239AA does not indicate that the executive decisions of GNCTD have to be taken with the concurrence of LG. The constitutional provisions inserted by 69th Constitution Amendment are with the object to ensure stability and permanence by providing

Legislative Assembly and Council of Ministers by the constitutional provisions itself. With regard to executive decision taken by the Council of Ministers/Ministers of GNCTD proviso gives adequate safeguard empowering the LG to make a reference to the President in the event there is difference of opinion between executive decisions of the GNCTD and the LG, but the scheme does not suggest that the decisions by Council of Ministers/Ministers have to be taken with the concurrence of the LG. The above conclusion is re-enforced by looking into the 1991 Act as well as Rules framed by the President under Section 44 of 1991 Act, namely, the Transaction of Business of the Government of National Capital Territory of Delhi Rules, 1993. The provisions of 1991 Act although provide for communication of proposal, agenda and decisions of the Council of Ministers/Ministers to LG but there is no indication in any of the provisions that the concurrence of LG is required with regard to the aforesaid decisions.

100. Earlier enactments governing the Delhi administration did provide the word concurrence of LG for

implementing decisions taken by GNCTD but the said scheme having been given a go-bye in the 1991 Act, there is no requirement of any concurrence of LG to the executive decisions taken by the GNCTD.

Communication to the LG, its purpose and object

101. The scheme of 1991 Act clearly delineates that LG has to be informed of all proposals, agendas and decisions taken by the Council of Minister/Ministers. Section 44 deals with the conduct of business which is to the following effect:

> *"**44.Conduct of business :***
>
> *(1) The President shall make rules :*
>
> *(a) for the allocation of business to the Ministers in so far as it is business with respect to which the Lieutenant Governor is required to act on the aid and advice of his Council of Ministers; and*
>
> *(b) for the more convenient transaction of business with the ministers, including the procedure to be adopted in the case of a difference of opinion between the Lieutenant Governor and the Council of Ministers or a Minister.*

> *(2) Save as otherwise provided in this Act, all executive action of Lieutenant Governor whether taken on the advise of his Ministers or otherwise shall be expressed to be taken in the name of the Lieutenant Governor.*
>
> *(3) Orders and other instruments made and executed in the name of the Lieutenant Governor shall be authenticated in such manner as may be specified in rules to be made by the Lieutenant Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Lieutenant Governor."*

102. Under Section 45, Chief Minister is to furnish information to the LG about all decisions of the Council of Ministers relating to the administration of the affairs of the Capital and the proposals for legislation and to furnish such information as may be called for by the LG. Section 45 is as follows:

> *"45. Duties of Chief Minister as respects the furnishing of information to the Lieutenant Governor, etc. :*
>
> *It shall be the duty of the Chief Minister —*
>
> *(a)to communicate to the Lieutenant Governor all decisions of the Council of Ministers relating to the administration*

of the affairs of the Capital and proposals for legislation;

(b)to furnish such information relating to the administration of the affairs of the Capital and proposals for legislation as Lieutenant Governor may call for, and

(c)if the Lieutenant Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council."

103. Rules have been framed under Section 44 of 1991 Act, namely, 1993 Rules, which throw considerable light over the actual functioning of GNCTD and LG. Rule 9 sub-rule (2) provides that if it is decided to circulate any proposal, the Department to which it belongs, shall prepare a memorandum setting out in brief the facts of the proposal, the points for decision and the recommendations of the Minister in charge and when the same is circulated to the Ministers, simultaneously a copy thereof is to be sent to the LG. Rule 10 is as follows:

"10. (1) While directing that a proposal shall be circulated, the Chief Minister may also direct, if the matter be of urgent

nature, that the Ministers shall communicate their opinion to the Secretary to the Council by a particular date, which shall be specified in the memorandum referred to in rule 9.

(2) If any Minister fails to communicate his opinion to the Secretary to the Council by the date so specified in the memorandum, it shall be assumed that he has accepted the recommendations contained therein.

(3) If the Minister has accepted the recommendations contained in the memorandum or the date by which he was required to communicate his opinion has expired, the Secretary to the Council shall submit the proposal to the Chief Minister.

(4) If the Chief Minister accepts the recommendations and if he has no observation to make, he shall return the proposal with his orders thereon to the Secretary to the Council.

(5) On receipt of the proposal, the Secretary to the Council shall communicate the decision to the Lieutenant Governor and pass on the proposal to the Secretary concerned who shall thereafter take necessary steps to issue the orders unless a reference to the Central Government is required in pursuance of the provisions of Chapter V."

104. The above provision also indicates that after proposal is accepted by the Chief Minister, the same shall be communicated to the LG and only thereafter

necessary step to issue the orders is to be taken provided no reference is made to the Central Government by the LG under Chapter V of the Rules.

105. Rule 13 sub-rule (3) provides that an agenda showing the proposals to be discussed in a meeting of the Council has been approved by the Chief Minister shall be sent to the LG. The agenda approved by the Chief Minister shall be sent by the Secretary to the Council, to the LG. Rule 13 sub-rule (3) is as follows:

> *"Rule 13(3) After an agenda showing the proposals to be discussed in a meeting of the Council has been approved by the Chief Minister, copies thereof, together with copies of such memoranda as have not been circulated under rule 11, shall be sent by the Secretary to the Council, to the Lieutenant Governor, the Chief Minister and other Ministers, so as to reach them at least two days before the date of 7 such meeting. The Chief Minister may, in case of urgency, curtail the said period of two days."*

106. Rule 14 again provides that decisions taken by the Council on each proposal shall be communicated to the LG. Standing orders issued by the Minister-in-charge for the disposal of proposals or matters in his Department are

also required to be communicated to LG, as required by Rules 15 and 16.

107. Rule 19 sub-rule (5) empowers the LG to call for papers relating to any proposal or matter in any Department and such requisition shall be complied with by the Secretary to the Department concerned.

108. Rule 23 enumerates certain matters which are to be submitted to LG before issuing any orders thereon. Rule 23 is as follows:

> *"23. The following classes of proposals or matters shall essentially be submitted to the Lieutenant Governor through the Chief Secretary and the Chief Minister before issuing any orders thereon, namely:*
>
> *(i) matters which affect or are likely to affect the peace and tranquility of the capital;*
>
> *(ii) matters which affect or are likely to affect the interest of any minority community, Scheduled Castes and backward classes;*
>
> *(iii) matters which affect the relations of the Government with any State Government, the Supreme Court of India or the High Court of Delhi;*

(iv) proposals or matters required to be referred to the Central Government under the Act or under Chapter V;

(v) matters pertaining to the Lieutenant Governor's Secretariat and personnel establishment and other matters relating to his office;

(va) matters on which Lieutenant Governor is required to make order under any law or instrument in force;

(vi) petitions for mercy from persons under sentence for death and other important cases in which it is proposed to recommend any revision of a judicial sentence;

(vii) matters relating to summoning, prorogation and dissolution of the Legislative Assembly, removal of disqualification of voters at elections to the Legislative Assembly, Local Self Government Institutions and other matters connected with those; and

(viii) any other proposals or matters of administrative importance which the Chief Minister may consider necessary.

109. Under Rule 24, the LG is empowered to require any order passed by the Minister-in-charge to be placed before the Council for consideration.

110. Rule 25 obliges the Chief Minister to furnish to the LG such information relating to the administration of

the Capital and proposals for legislation as the LG may call for.

111. Rule 49 deals with the difference of opinion between the LG and Minister in regard to any matter, whereas Rule 50 deals with difference of opinion between the LG and the Council with regard to any matter. Rules 49 and 50 are as follows:

> *"49. In case of difference of opinion between the Lieutenant Governor and a Minister in regard to any matter, the Lieutenant Governor shall endeavour by discussion on the matter to settle any point on which such difference of opinion has arisen. Should the difference of opinion persist, the Lieutenant Governor may direct that the matter be referred to the Council*
>
> *50. In case of difference of opinion between the Lieutenant Governor and the Council with regard to any matter, the Lieutenant Governor shall refer it to the Central Government for the decision of the President and shall act according to the decision of the President."*

112. Rule 49 enable and oblige the LG to discuss the matter when there is some difference with decision of a Minister. The discussion to sort out difference and to arrive at an acceptable course of action is always welcome and is a measure employed in all organisational

functioning.

113. The scheme as delineated by 1991 Act and Rules 1993 clearly indicates that LG has to be kept informed of all proposals, agendas of meeting and decisions taken. The purpose of communication of all decisions is to keep him posted with the administration of Delhi. The communication of all decisions is necessary to enable him to go through the proposals and decisions so as to enable him to exercise powers as conceded to him under 1991 Act and Rules 1993. Further, the power given under proviso to 239AA(4) can be exercised only when LG is informed and communicated of all decisions taken by GNCTD. The communication of all decisions is necessary to enable the LG to perform duties and obligations to oversee the administration of GNCTD and where he is of different opinion he can make a reference to the President. As observed above the purpose of communication is not to obtain his concurrence of the decision but purpose is to post him with the administration so as to enable him to exercise his powers conceded to him under proviso to

Article 239AA sub-clause (4). We have already observed that the powers given in proviso to sub-clause (4) is not to be exercised in a routine manner rather it is to be exercised by the LG on appropriate reasons to safeguard the interest of the Union Territory.

114. Learned Additional Solicitor General has submitted before us that in the last few years there have been very few references by the LG in exercise of powers under proviso to sub-clause (4) of Article 239AA. Rule 14 sub-rule (2) of 1993 Rules empowers the Minister concerned to take necessary action to give effect to the decision of the Council after decision has been communicated to the LG. The purpose of communication is to enable the LG to discharge obligation to oversee and scrutinise the decision. Although, there is no indication in the 1993 Rules as to after communication of the decisions of the Council as to what stage the decisions are to be implemented. As observed no concurrence is required on the decisions and communication is only for the purpose of enabling the LG to formulate opinion as to whether

there is any such difference which may require reference. Only a reasonable time gap is to elapse, which is sufficient to the LG to scrutinise the decision. It is for the LG and the Council of Ministers to formulate an appropriate procedure for smooth running of the administration decisions can very well be implemented by the GNCTD immediately after the decisions are communicated to LG and are “seen” by the LG. When LG has seen a decision and does not decide to make a reference, the decision has to be implemented by all means. We are, thus, of the view that the 1991 Act and 1993 Rules cover the entire gamut, manner and procedure of executive decisions taken by the Council of Ministers/Minister their communication, and implementation and the entire administration is to be run accordingly.

115. The 1993 Rules provide that Chief Secretary and the Secretary of the Department concerned are severally responsible for the careful observance of these Rules and when either of them considers that there has been any material departure, he shall bring it to the notice of

the Minister-in-charge, Chief Minister and the LG. Rule 57 is as follows:

> *"57. The Chief Secretary and the Secretary of the Department concerned are severally responsible for the careful observance of these rules and when either of them considers that there has been any material departure from these rules, he shall personally bring it to the notice of the Minister-in-charge, Chief Minister and the Lieutenant Governor."*

116. The duty of observance of 1993 Rules and other statutory provisions lay both on Council of Ministers, Chief Minister and LG. All have to act in a manner so that the administration may run smoothly without there being any bottleneck. The object and purpose of all constitutional provisions, Parliamentary enactments and the Rules framed by the President is to carry the administration in accordance with the provisions in the interest of public in general so that rights guaranteed by the Constitution to each and every person are realised. When the duty is entrusted on persons holding high office, it is expected that they shall conduct themselves, in faithful, discharge of their duties to ensure smooth running of administration and protection of

rights of all concerned.

117. I have perused the elaborate opinion of My Lord, the Chief Justice with which I substantially agree, but looking to the importance of the issues, I have penned my own views giving reasons for my conclusions.

118. I have also gone through the well researched and well considered opinion of Brother Justice D.Y. Chandrachud. The view expressed by Justice Chandrachud are substantially the same as have been expressed by me in this judgment.

119. In view of the foregoing discussions we arrive on the following conclusions on the issues which have arisen before us:

CONCLUSIONS

I. The interpretation of the Constitution has to be purposive taking into consideration the need of time and Constitutional principles. The intent of the Constitution framers, the object and reasons of a Constitutional

Amendment always throw light on the Constitutional provisions. For adopting the purposive interpretation of a particular provision the express language employed cannot be given a complete go-bye.

II. The Parliament has power to make laws for NCTD in respect of any of the matters enumerated in State List and Concurrent List. The Legislative Assembly of NCTD has also legislative power with respect to matters enumerated in the State List (except excepted entries) and in the Concurrent List.

III. Executive power is co-extensive with the legislative power. Legislative power is given to give effect to legislative enactments. The Policy of legislation can be given effect to only by executive machinery.

IV. When the Constitution was enforced, executive power of Union in reference to Part C States with regard to Concurrent List was not excluded. Part C States having been substituted by 7th Constitution Amendment as Union Territories. The word 'State' as occurring in proviso to

Article 73 after 7th Constitution Amendment cannot be read as including Union Territory. Reading the word 'Union Territory' within the word 'State' in proviso to Article 73 shall not be in consonance with scheme of Part VIII (Union Territories) of the Constitution.

V. Executive power of the Union is co-extensive on all subjects referable to List II and III on which Legislative Assembly of NCTD has also legislative powers.

VI. The “aid and advice” given by Council of Ministers as referred to in sub-clause (4) of Article 239AA is binding on the LG unless he decides to exercise his power given in proviso to sub-clause (2) of Article 239AA.

VII. The Legislative Assembly of NCTD being representing the views of elected representatives, their opinion and decisions have to be respected in all cases except where LG decides to make a reference to the President.

VIII. The power given in proviso to sub-clause (4) to LG

is not to be exercised in a routine manner rather it is to be exercised by the LG on valid reasons after due consideration, when it becomes necessary to safeguard the interest of the Union Territory.

IX. For the Executive decisions taken by the Council of Ministers/Ministers of GNCTD, proviso to sub-clause (4) gives adequate safeguard empowering the LG to make a reference to the President in the event there is difference of opinion between decisions of the Ministers and the LG, but the Constitutional Scheme does not suggest that the decisions by the Council of Ministers/Ministers require any concurrence of the LG.

X. The scheme as delineated by 1991 Act and 1993 Rules clearly indicates that LG has to be kept informed of all proposals, agendas and decisions taken. The purpose of communication of all decisions is to keep him posted with the administration of Delhi. The communication of all decisions is necessary to enable him to go through so as to enable him to exercise the powers as conceded to him

under proviso to sub-clause (4) as well as under 1991 Act and 1993 Rules. The purpose of communication is not to obtain concurrence of LG.

XI. From persons holding high office, it is expected that they shall conduct themselves in faithful discharge of their duties so as to ensure smooth running of administration so that rights of all can be protected.

120. We having answered the constitutional issues raised before us in the above manner let these matters be now placed before the appropriate Bench for hearing after obtaining orders from Hon'ble the Chief Justice.

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
JULY 04, 2018.